

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsecs. (a)(1) and (c)(2), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of this title. Title II of the National Emergencies Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 101(b) of this Act, referred to in subsec. (a)(2), is section 101(b) of Pub. L. 95-223, which is set out as a note under section 5 of the Appendix to this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (d) of this section is listed as the 11th item on page 27), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§ 1707. Multinational economic embargoes against governments in armed conflict with the United States

(a) Policy on the establishment of embargoes

It is the policy of the United States, that upon the use of the Armed Forces of the United States to engage in hostilities against any foreign country, the President shall, as appropriate—

- (1) seek the establishment of a multinational economic embargo against such country; and
- (2) seek the seizure of its foreign financial assets.

(b) Reports to Congress

Not later than 20 days after the first day of the engagement of the United States in hostilities described in subsection (a) of this section, the President shall, if the armed conflict has continued for 14 days, submit to Congress a report setting forth—

- (1) the specific steps the United States has taken and will continue to take to establish a multinational economic embargo and to initiate financial asset seizure pursuant to subsection (a) of this section; and
- (2) any foreign sources of trade or revenue that directly or indirectly support the ability of the adversarial government to sustain a military conflict against the United States.

(Pub. L. 106-65, div. A, title XII, §1231, Oct. 5, 1999, 113 Stat. 788.)

CODIFICATION

This section enacted as part of the National Defense Authorization Act for Fiscal Year 2000, and not as part of the International Emergency Economic Powers Act which comprises this chapter.

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SUBCHAPTER I—ELECTRONIC SURVEILLANCE

§ 1801. Definitions

As used in this subchapter:

(a) “Foreign power” means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons;

(6) an entity that is directed and controlled by a foreign government or governments; or

(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.

(b) “Agent of a foreign power” means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities;

(C) engages in international terrorism or activities in preparation therefor;

(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor for or on behalf of a foreign power; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or

on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) “International terrorism” means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) “Sabotage” means activities that involve a violation of chapter 105 of title 18, or that would involve such a violation if committed against the United States.

(e) “Foreign intelligence information” means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) “Electronic surveillance” means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) “Attorney General” means the Attorney General of the United States (or Acting Attorney General), the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28.

(h) “Minimization procedures”, with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and

dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) “United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

(j) “United States”, when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) “Aggrieved person” means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(l) “Wire communication” means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) “Person” means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) “Contents”, when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(o) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(p) “Weapon of mass destruction” means—

(1) any explosive, incendiary, or poison gas device that is designed, intended, or has the capability to cause a mass casualty incident;

(2) any weapon that is designed, intended, or has the capability to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

(3) any weapon involving a biological agent, toxin, or vector (as such terms are de-

defined in section 178 of title 18) that is designed, intended, or has the capability to cause death, illness, or serious bodily injury to a significant number of persons; or

(4) any weapon that is designed, intended, or has the capability to release radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.

(Pub. L. 95-511, title I, § 101, Oct. 25, 1978, 92 Stat. 1783; Pub. L. 106-120, title VI, § 601, Dec. 3, 1999, 113 Stat. 1619; Pub. L. 107-56, title X, § 1003, Oct. 26, 2001, 115 Stat. 392; Pub. L. 107-108, title III, § 314(a)(1), (c)(2), Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 108-458, title VI, § 6001(a), Dec. 17, 2004, 118 Stat. 3742; Pub. L. 109-177, title V, § 506(a)(5), Mar. 9, 2006, 120 Stat. 248; Pub. L. 110-261, title I, § 110(a), July 10, 2008, 122 Stat. 2465.)

AMENDMENT OF SECTION

For termination of amendment by Pub. L. 108-458, see Termination Date of 2004 Amendment note below.

AMENDMENTS

2008—Subsec. (a)(7). Pub. L. 110-261, § 110(a)(1), added par. (7).

Subsec. (b)(1)(D), (E). Pub. L. 110-261, § 110(a)(2), added subpars. (D) and (E).

Subsec. (e)(1)(B). Pub. L. 110-261, § 110(a)(3), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

Subsec. (p). Pub. L. 110-261, § 110(a)(4), added subsec. (p).

2006—Subsec. (g). Pub. L. 109-177 substituted “, the Deputy Attorney General, or, upon the designation of the Attorney General, the Assistant Attorney General designated as the Assistant Attorney General for National Security under section 507A of title 28” for “or the Deputy Attorney General”.

2004—Subsec. (b)(1)(C). Pub. L. 108-458, § 6001, temporarily added subpar. (C). See Termination Date of 2004 Amendment note below.

2001—Subsec. (f)(2). Pub. L. 107-56, § 1003, as amended by Pub. L. 107-108, § 314(c)(2), inserted “, but does not include the acquisition of those communications of computer trespassers that would be permissible under section 2511(2)(i) of title 18” before semicolon at end.

Subsec. (h)(4). Pub. L. 107-108, § 314(a)(1), substituted “72 hours” for “twenty-four hours”.

1999—Subsec. (b)(2)(D), (E). Pub. L. 106-120 added subpar. (D) and redesignated former subpar. (D) as (E).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-261, title IV, § 402, July 10, 2008, 122 Stat. 2473, provided that: “Except as provided in section 404 [set out as a note under this section], the amendments made by this Act [see Short Title of 2008 Amendment note below] shall take effect on the date of the enactment of this Act [July 10, 2008].”

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, § 6001(b), Dec. 17, 2004, 118 Stat. 3742, as amended by Pub. L. 109-177, title I, § 103, Mar. 9, 2006, 120 Stat. 195; Pub. L. 111-118, div. B, § 1004(b), Dec. 19, 2009, 123 Stat. 3470, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall cease to have effect on February 28, 2010.

“(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which the provisions cease to have effect, such provisions shall continue in effect.”

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(2) of Pub. L. 107-108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107-56 as originally enacted.

EFFECTIVE DATE; EXCEPTION

Pub. L. 95-511, title VII, § 701, formerly title III, § 301, Oct. 25, 1978, 92 Stat. 1798, as renumbered title IV, § 401, and amended by Pub. L. 103-359, title VIII, § 807(a)(1), (2), Oct. 14, 1994, 108 Stat. 3443; renumbered title VI, § 601, and amended Pub. L. 105-272, title VI, §§ 601(1), 603(a), Oct. 20, 1998, 112 Stat. 2404, 2412; renumbered title VII, § 701, Pub. L. 108-458, title VI, § 6002(a)(1), Dec. 17, 2004, 118 Stat. 3743, which provided that the provisions of this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note below] (other than titles III, IV, and V [enacting subchapters II, III, and IV, respectively, of this chapter]) and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [enacting this subchapter] within ninety days following the designation of the first judge pursuant to section 103 of this Act [section 1803 of this title], was repealed by Pub. L. 110-261, title I, § 101(a)(1), July 10, 2008, 122 Stat. 2437.

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-261, § 1(a), July 10, 2008, 122 Stat. 2436, provided that: “This Act [enacting section 1812 and subchapters VI and VII of this chapter, amending this section, sections 1803 to 1805, 1806, 1808, 1809, 1821 to 1825, 1843, and 1871 of this title, and section 2511 of Title 18, Crimes and Criminal Procedure, repealing sections 1805a to 1805c of this title and subchapter VI of this chapter, enacting provisions set out as notes under this section, section 1881 of this title, and section 2511 of Title 18, amending provisions set out as a note under section 1803 of this title, and repealing provisions set out as a note under this section] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008’ or the ‘FISA Amendments Act of 2008’.”

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-55, § 1, Aug. 5, 2007, 121 Stat. 552, provided that: “This Act [enacting sections 1805a to 1805c of this title, amending section 1803 of this title, and enacting provisions set out as a note under section 1803 of this title] may be cited as the ‘Protect America Act of 2007’.”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-567, title VI, § 601, Dec. 27, 2000, 114 Stat. 2850, provided that: “This title [enacting section 9A of the Classified Information Procedures Act, set out in the Appendix to Title 18, Crimes and Criminal Procedure, amending sections 402a, 1804, 1805, 1808, 1823, and 1824 of this title, and enacting provisions set out as notes under this section and section 1806 of this title] may be cited as the ‘Counterintelligence Reform Act of 2000’.”

SHORT TITLE

Section 1 of Pub. L. 95-511 provided in part: “That this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note above] may be cited as the ‘Foreign Intelligence Surveillance Act of 1978’.”

SEVERABILITY

Pub. L. 110-261, title IV, § 401, July 10, 2008, 122 Stat. 2473, provided that: “If any provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, of any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.”

Pub. L. 106-567, title VI, § 608, Dec. 27, 2000, 114 Stat. 2856, provided that: “If any provision of this title [see Short Title of 2000 Amendment note above] (including an amendment made by this title), or the application thereof, to any person or circumstance, is held invalid, the remainder of this title (including the amendments made by this title), and the application thereof, to other persons or circumstances shall not be affected thereby.”

TRANSITION PROCEDURES

Pub. L. 110-261, title IV, § 404, July 10, 2008, 122 Stat. 2474, provided that:

“(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

“(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Except as provided in paragraph (7), notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act [see Short Title of 2008 Amendment note above], any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) subject to paragraph (3), section 105A of such Act [50 U.S.C. 1805a], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

“(B) sections 105B and 105C of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b, 1805c], as added by sections 2 and 3, respectively, of the Protect America Act of 2007, shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the later of—

“(i) the expiration of such order, authorization, or directive; or

“(ii) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

“(4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b(l)], as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

“(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e) of the Foreign Intelligence Surveillance Act [of 1978]

(50 U.S.C. 1803(e)), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, until the later of—

“(A) the expiration of all orders, authorizations, or directives referred to in paragraph (1); or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(6) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, any amendment made by this Act, the Protect America Act of 2007 (Public Law 110-55) [see Short Title of 2007 Amendment note above], or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 [121 Stat. 555] shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

“(iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007, after the date of such certification; and

“(iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been included in a semi-annual report required by such section 4.

“(7) REPLACEMENT OF ORDERS, AUTHORIZATIONS, AND DIRECTIVES.—

“(A) IN GENERAL.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1805b], as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), with an authorization under section 702 of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881a] (as added by section 101(a) of this Act), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of such Act [50 U.S.C. 1881(b)(2)]) (as so added) a certification prepared in accordance with subsection (g) of such section 702 and the procedures adopted in accordance with subsections (d) and (e) of such section 702 at least 30 days before the expiration of such authorization.

“(B) CONTINUATION OF EXISTING ORDERS.—If the Attorney General and the Director of National Intelligence seek to replace an authorization made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 522), by filing a certification in accordance with subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a) of such section 105B, until the Foreign Intelligence Surveillance Court (as such term is defined in section 701(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (as so added)) issues an order with respect to that certification under section 702(i)(3) of such Act (as so added) at which time the provisions of that section and of section 702(i)(4) of such Act (as so added) shall apply.

“(8) EFFECTIVE DATE.—Paragraphs (1) through (7) shall take effect as if enacted on August 5, 2007.

“(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

“(1) ORDERS IN EFFECT ON DECEMBER 31, 2012.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

“(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act, any amendment made by this Act, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the later of—

“(A) the expiration of such order, authorization, or directive; or

“(B) the date on which final judgment is entered for any petition or other litigation relating to such order, authorization, or directive.

“(3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

“(A) section 103(e) of such Act [50 U.S.C. 1803(e)], as amended by section 403(a)(1)(B)(ii), shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act [50 U.S.C. 1881a(h)], as added by section 101(a);

“(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act (as so added);

“(C) section 703(e) of such Act [50 U.S.C. 1881b(e)] (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

“(D) section 706 of such Act [50 U.S.C. 1881e] (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

“(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978, [50 U.S.C. 1881c] as added by section 101(a).

“(4) REPORTING REQUIREMENTS.—

“(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(7) and 707 of such Act, [50 U.S.C. 1881a(l), 1881f] as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

“(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

“(i) made by the Attorney General;

“(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

“(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1881 et seq.], as amended by section 101(a), after the date of such certification; and

“(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act [50 U.S.C. 1871], as amended by section 101(c), or section 702(7) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(7), or 707.

“(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act [July 10, 2008] under section 2.5 of Executive Order 12333 [50 U.S.C. 401 note] to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

“(A) the date that authorization expires; or

“(B) the date that is 90 days after the date of the enactment of this Act [July 10, 2008].”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to Congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 1801(a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess compliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 1808(a) of this title.

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804 of this title; or

(B) the certification is necessary to determine the legality of the surveillance under section 1806(f) of this title.

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) of this section unless such surveillance may involve the acquisition of communications of any United States person.

(Pub. L. 95-511, title I, § 102, Oct. 25, 1978, 92 Stat. 1786; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691.)

AMENDMENTS

2004—Subsec. (a)(3), (4)(B). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EX. ORD. NO. 12139. EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, as amended by Ex. Ord. No. 13383, § 1, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, § 1, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act [this chapter] for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)), the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1-102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act [50 U.S.C. 1803] to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1-103. Pursuant to Section 104(a)(6) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(6)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(6) of the Act in support of applications to conduct electronic surveillance:

- (a) Secretary of State.
- (b) Secretary of Defense.
- (c) Director of National Intelligence.
- (d) Director of the Federal Bureau of Investigation.
- (e) Deputy Secretary of State.
- (f) Deputy Secretary of Defense.
- (g) Director of the Central Intelligence Agency.
- (h) Principal Deputy Director of National Intelligence.
- (i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

1-104. Section 2-202 of Executive Order No. 12036 [set out under section 401 of this title] is amended by inserting the following at the end of that section: “Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.”

1-105. Section 2-203 of Executive Order No. 12036 [set out under section 401 of this title] is amended by inserting the following at the end of that section: “Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.”

§ 1803. Designation of judges**(a) Court to hear applications and grant orders; record of denial; transmittal to court of review**

(1) The Chief Justice of the United States shall publicly designate 11 district court judges from at least seven of the United States judicial circuits of whom no fewer than 3 shall reside within 20 miles of the District of Columbia who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this chapter, except that no judge designated under this subsection (except when sitting en banc under paragraph (2)) shall hear the same application for electronic surveillance under this chapter which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this chapter, such judge shall provide immediately for the record a written statement of each reason of his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) of this section.

(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 1861(f) of this title or paragraph (4) or (5) of section 1881a(h) of this title, hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(ii) the proceeding involves a question of exceptional importance.

(B) Any authority granted by this chapter to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this chapter on the exercise of such authority.

(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.

(b) Court of review; record, transmittal to Supreme Court

The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this chapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(c) Expeditious conduct of proceedings; security measures for maintenance of records

Proceedings under this chapter shall be conducted as expeditiously as possible. The record of proceedings under this chapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of National Intelligence.

(d) Tenure

Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) of this section shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) of this section shall be designated for terms of three, five, and seven years.

(e) Jurisdiction and procedures for review of petitions

(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or, if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the presiding judge of such court, shall comprise a petition review pool which shall have jurisdiction to review petitions filed pursuant to section 1861(f)(1) or 1881a(h)(4) of this title.

(2) Not later than 60 days after March 9, 2006, the court established under subsection (a) shall adopt and, consistent with the protection of national security, publish procedures for the review of petitions filed pursuant to section 1861(f)(1) or 1881a(h)(4) of this title by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted in camera and shall also provide for the designation of an acting presiding judge.

(f) Stay of order

(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any subchapter of this chapter, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this chapter.

(g) Establishment and transmittal of rules and procedures

(1) The courts established pursuant to subsections (a) and (b) may establish such rules and procedures, and take such actions, as are reasonably necessary to administer their responsibilities under this chapter.

(2) The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded, and shall be transmitted to the following:

(A) All of the judges on the court established pursuant to subsection (a).

(B) All of the judges on the court of review established pursuant to subsection (b).

(C) The Chief Justice of the United States.

(D) The Committee on the Judiciary of the Senate.

(E) The Select Committee on Intelligence of the Senate.

(F) The Committee on the Judiciary of the House of Representatives.

(G) The Permanent Select Committee on Intelligence of the House of Representatives.

(3) The transmissions required by paragraph (2) shall be submitted in unclassified form, but may include a classified annex.

(i)¹ Compliance with orders, rules, and procedures

Nothing in this chapter shall be construed to reduce or contravene the inherent authority of the court established under subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.

(Pub. L. 95-511, title I, § 103, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 107-56, title II, § 208, Oct. 26, 2001, 115 Stat. 283; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, § 106(f)(1), 109(d), Mar. 9, 2006, 120 Stat. 197, 205; Pub. L. 110-55, § 5(a), Aug. 5, 2007, 121 Stat. 556; Pub. L. 110-261, title I, § 109(a)-(b)(2)(A), (c), (d), title IV, § 403(a)(1)(B)(ii), July 10, 2008, 122 Stat. 2464, 2465, 2474.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c), (f), (g)(1), and (i), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-261, § 109(a)-(b)(2)(A), designated existing provisions as par. (1), inserted “at least” before “seven of the United States judicial circuits” and “(except when sitting en banc under paragraph (2))” before “shall hear”, and added par. (2).

Subsec. (e)(1), (2). Pub. L. 110-261, § 403(a)(1)(B)(ii), which directed substitution of “1861(f)(1) or 1881a(h)(4)” for “1805b(h) or 1861(f)(1)”, was executed by making the substitution for “1861(f)(1)” to reflect the probable intent of Congress and termination of the temporary amendment by Pub. L. 110-55, § 5(a). See 2007 Amendment note and Effective and Termination Dates of 2007 Amendment note below.

Subsecs. (f), (g). Pub. L. 110-261, § 109(c), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (i). Pub. L. 110-261, § 109(d), added subsec. (i).

2007—Subsec. (e). Pub. L. 110-55, § 5(a), 6(c), temporarily substituted “1805b(h) or 1861(f)(1)” for “1861(f)(1)” in pars. (1) and (2). See Effective and Termination Dates of 2007 Amendment note below.

2006—Subsecs. (e), (f). Pub. L. 109-177 added subsecs. (e) and (f).

2004—Subsec. (c). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a). Pub. L. 107-56 substituted “11 district court judges” for “seven district court judges” and inserted “of whom no fewer than 3 shall reside within 20 miles of the District of Columbia” after “judicial circuits”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Pub. L. 110-55, § 6, Aug. 5, 2007, 121 Stat. 556, as amended by Pub. L. 110-182, § 1, Jan. 31, 2008, 122 Stat. 605; Pub. L. 110-261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474, provided that:

“(a) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section] shall take effect immediately after the date of the enactment of this Act [Aug. 5, 2007].

“(b) Repealed. Pub. L. 110-261, title IV, § 403(a)(3), July 10, 2008, 122 Stat. 2474.]

“(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act [enacting sections 1805a to 1805c of this title and amending this section], and the amendments made by this Act [enacting sections 1805a to 1805c of this title and amending this section], shall cease to have effect 195 days after the date of the enactment of this Act.

“(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).”

[Repeal by Pub. L. 110-261 of section 6(b) of Pub. L. 110-55, set out above, effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.]

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 1804. Applications for court orders

(a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving electronic surveillance under this subchapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this subchapter. It shall include—

¹ So in original. No subsec. (h) has been enacted.

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific target of the electronic surveillance;

(3) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) a statement of the proposed minimization procedures;

(5) a description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(7) a summary statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application; and

(9) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this subchapter should not automatically terminate when the described type of information

has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter.

(b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) of this section an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) of this section for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) of this section for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modi-

fication under the preceding sentence, such official may not delegate the responsibility to supervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95-511, title I, §104, Oct. 25, 1978, 92 Stat. 1788; Pub. L. 106-567, title VI, §602(a), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, §218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §108(a)(1), Mar. 9, 2006, 120 Stat. 203; Pub. L. 110-261, title I, §104, July 10, 2008, 122 Stat. 2460.)

AMENDMENTS

2008—Subsec. (a)(2) to (4). Pub. L. 110-261, §104(1)(A), (B), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;”.

Subsec. (a)(5). Pub. L. 110-261, §104(1)(B), (C), redesignated par. (6) as (5) and struck out “detailed” before “description”. Former par. (5) redesignated (4).

Subsec. (a)(6). Pub. L. 110-261, §104(1)(B), (D), redesignated par. (7) as (6) and substituted “Affairs,” for “Affairs or” and “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—” for “Senate—” in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7). Pub. L. 110-261, §104(1)(B), (E), redesignated par. (8) as (7) and substituted “summary statement of” for “statement of”. Former par. (7) redesignated (6).

Subsec. (a)(8) to (11). Pub. L. 110-261, §104(1)(A), (B), redesignated pars. (9) and (10) as (8) and (9), respectively, and struck out par. (11) which read as follows: “whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.” Former par. (8) redesignated (7).

Subsecs. (b) to (e). Pub. L. 110-261, §104(2)–(4), redesignated subsecs. (c) to (e) as (b) to (d), respectively, in subsec. (d)(1)(A) substituted “the Director of National Intelligence, or the Director of the Central Intelligence Agency” for “or the Director of National Intelligence”, and struck out former subsec. (b) which related to exclusion of certain information respecting foreign power targets.

2006—Subsec. (a)(3). Pub. L. 109-177 inserted “specific” before “target”.

2004—Subsec. (e)(1)(A). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(7)(B). Pub. L. 107-56 substituted “a significant purpose” for “the purpose”.

2000—Subsec. (e). Pub. L. 106-567 added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memo-

randum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

DESIGNATION OF CERTAIN OFFICIALS TO MAKE CERTIFICATIONS

For designation of certain officials to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out under section 1802 of this title.

§ 1805. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1804 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(3) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) of this title; and

(4) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E)¹ of this title and any other information furnished under section 1804(d)¹ of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(2) of this section, a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

(1) Specifications

An order approving an electronic surveillance under this section shall specify—

(A) the identity, if known, or a description of the specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title;

¹ See References in Text note below.

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance; and

(E) the period of time during which the electronic surveillance is approved.

(2) Directions

An order approving an electronic surveillance under this section shall direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person, or in circumstances where the Court finds, based upon specific facts provided in the application, that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons, furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(3) Special directions for certain orders

An order approving an electronic surveillance under this section in circumstances where the nature and location of each of the facilities or places at which the surveillance will be directed is unknown shall direct the applicant to provide notice to the court within ten days after the date on which surveillance begins to be directed at any new facility or place, unless the court finds good cause to justify a longer period of up to 60 days, of—

(A) the nature and location of each new facility or place at which the electronic surveillance is directed;

(B) the facts and circumstances relied upon by the applicant to justify the applicant's belief that each new facility or place at which the electronic surveillance is directed is or was being used, or is about to be used, by the target of the surveillance;

(C) a statement of any proposed minimization procedures that differ from those contained in the original application or order, that may be necessitated by a change in the

facility or place at which the electronic surveillance is directed; and

(D) the total number of electronic surveillances that have been or are being conducted under the authority of the order.

(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated

(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that (A) an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that (A) an extension of an order under this chapter for a surveillance targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power as defined in section 1801(a)(4) of this title that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power who is not a United States person may be for a period not to exceed 1 year.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Emergency orders

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

(B) reasonably determines that the factual basis for the issuance of an order under this subchapter to approve such electronic surveillance exists;

(C) informs, either personally or through a designee, a judge having jurisdiction under section 1803 of this title at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

(D) makes an application in accordance with this subchapter to a judge having jurisdiction

under section 1803 of this title as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(f) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel

Notwithstanding any other provision of this subchapter, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and:

(D) *Provided*, That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used

by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, or section 605 of title 47, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this subchapter; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Retention of certifications, applications and orders

Certifications made by the Attorney General pursuant to section 1802(a) of this title and applications made and orders granted under this subchapter shall be retained for a period of at least ten years from the date of the certification or application.

(h) Bar to legal action

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance in accordance with a court order or request for emergency assistance under this chapter for electronic surveillance or physical search.

(i) Pen registers and trap and trace devices

In any case in which the Government makes an application to a judge under this subchapter to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 1842(d)(2) of this title.

(Pub. L. 95-511, title I, § 105, Oct. 25, 1978, 92 Stat. 1790; Pub. L. 98-549, § 6(b)(3), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 106-567, title VI, § 602(b), Dec. 27, 2000, 114 Stat. 2851; Pub. L. 107-56, title II, §§ 206, 207(a)(1), (b)(1), 225, Oct. 26, 2001, 115 Stat. 282, 295; Pub. L. 107-108, title III, § 314(a)(2), (c)(1),

Dec. 28, 2001, 115 Stat. 1402, 1403; Pub. L. 107-273, div. B, title IV, §4005(c), Nov. 2, 2002, 116 Stat. 1812; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§102(b)(1), 105(a), 108(a)(2), (b), Mar. 9, 2006, 120 Stat. 195, 203; Pub. L. 110-261, title I, §§105(a), 110(c)(1), July 10, 2008, 122 Stat. 2461, 2466; Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, subsec. (c)(2) of this section is amended to read as it read on Oct. 25, 2001:

(2) *direct—*

(A) *that the minimization procedures be followed;*

(B) *that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;*

(C) *that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished that such person wishes to retain; and*

(D) *that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.*

REFERENCES IN TEXT

Section 1804(a)(7)(E) of this title, referred to in subsec. (a)(4), was redesignated section 1804(a)(6)(E) of this title by Pub. L. 110-261, title I, §104(1)(B), July 10, 2008, 122 Stat. 2461.

Section 1804(d) of this title, referred to in subsec. (a)(4), was redesignated section 1804(c) of this title by Pub. L. 110-261, title I, §104(3), July 10, 2008, 122 Stat. 2461.

This chapter, referred to in subsecs. (d) and (h), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

CODIFICATION

As originally enacted, Pub. L. 107-56, §225, amended this section by adding subsec. (h) relating to bar of legal action after subsec. (g). The section already contained a subsec. (h). Both Pub. L. 107-108, §314(a)(2)(C), and Pub. L. 107-273, §4005(c), made amendments retroactive to the date of enactment of Pub. L. 107-56 which had the effect of redesignating subsec. (h), relating to bar of legal action, as subsec. (i) and transferring it to appear at the end of this section. See 2001 Amendment notes, Effective Date of 2002 Amendment note, and Effective Date of 2001 Amendment note below.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-261, §105(a)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which read as follows: “the

President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information.”.

Subsec. (b). Pub. L. 110-261, §105(a)(2), substituted “(a)(2)” for “(a)(3)”.

Subsec. (c)(1)(D) to (F). Pub. L. 110-261, §105(a)(3), inserted “and” after semicolon at and of subpar. (D), substituted a period for “; and” in subpar. (E), and struck out subpar. (F) which read as follows: “whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device.”

Subsec. (d). Pub. L. 110-261, §105(a)(4), (5), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to exclusion of certain information respecting foreign power targets from ex parte order.

Subsec. (d)(2). Pub. L. 110-261, §110(c)(1), substituted “paragraph (5), (6), or (7) of section 1801(a)” for “section 1801(a)(5) or (6)”.

Subsec. (e). Pub. L. 110-261, §105(a)(5), (6), redesignated subsec. (f) as (e) and amended it generally. Prior to amendment, subsec. (e) related to authority of the Attorney General to authorize emergency employment of electronic surveillance and required application to a judge within 72 hours after authorization. Former subsec. (e) redesignated (d).

Subsecs. (f) to (i). Pub. L. 110-261, §105(a)(5), (7), added subsec. (i) and redesignated former subsecs. (g) to (i) as (f) to (h), respectively. Former subsec. (f) redesignated (e).

2006—Subsec. (c)(1). Pub. L. 109-177, §108(b)(1), substituted “(1) SPECIFICATIONS.—An order approving an electronic surveillance under this section shall specify—” for “An order approving an electronic surveillance under this section shall—

“(1) specify—”.

Subsec. (c)(1)(A). Pub. L. 109-177, §108(a)(2)(A), substituted “specific target of the electronic surveillance identified or described in the application pursuant to section 1804(a)(3) of this title” for “target of the electronic surveillance”.

Subsec. (c)(1)(F). Pub. L. 109-177, §108(b)(2), substituted period for “; and” at end.

Subsec. (c)(2). Pub. L. 109-177, §108(b)(3), inserted par. heading and substituted “An order approving an electronic surveillance under this section shall direct” for “direct” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 109-177, §108(a)(2)(B), substituted “where the Court finds, based upon specific facts provided in the application,” for “where the Court finds”.

Subsec. (c)(3). Pub. L. 109-177, §108(b)(4), added par. (3).

Subsec. (e)(1)(B). Pub. L. 109-177, §105(a)(1), substituted “who is not a United States person” for “, as defined in section 1801(b)(1)(A) of this title”.

Subsec. (e)(2)(B). Pub. L. 109-177, §105(a)(2), substituted “who is not a United States person” for “as defined in section 1801(b)(1)(A) of this title”.

2004—Subsec. (c)(2)(C). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2002—Subsec. (i). Pub. L. 107-273 amended Pub. L. 107-56, §225. See 2001 Amendment notes below.

2001—Subsec. (c)(1)(B). Pub. L. 107-108, §314(a)(2)(A), inserted “, if known” before semicolon at end.

Subsec. (c)(2)(B). Pub. L. 107-56, §206, inserted “, or in circumstances where the Court finds that the actions of the target of the application may have the effect of thwarting the identification of a specified person, such other persons,” after “specified person”.

Subsec. (e)(1). Pub. L. 107-56, §207(a)(1), inserted “(A)” after “except that” and “, and (B) an order under this chapter for a surveillance targeted against an agent of a foreign power, as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less” before period at end.

Subsec. (e)(2). Pub. L. 107-56, § 207(b)(1), as amended by Pub. L. 107-108, § 314(c)(1), inserted “(A)” after “except that” and “, and (B) an extension of an order under this chapter for a surveillance targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for a period not to exceed 1 year” before period at end.

Subsec. (f). Pub. L. 107-108, § 314(a)(2)(B), substituted “72 hours” for “twenty-four hours” in two places in concluding provisions.

Subsec. (h). Pub. L. 107-108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107-56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106-567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Subsec. (i). Pub. L. 107-108, § 314(a)(2)(D), inserted “for electronic surveillance or physical search” before period at end.

Pub. L. 107-108, § 314(a)(2)(C), transferred subsec. (h) added by section 225 of Pub. L. 107-56 to appear after the subsec. (h) redesignated by section 602(b)(2) of Pub. L. 106-567, and redesignated the transferred subsec. (h) as subsec. (i). See Codification note above.

Pub. L. 107-56, § 225, as amended by Pub. L. 107-273, § 4005(c), added subsec. (i) relating to bar of legal action.

2000—Subsecs. (b), (c). Pub. L. 106-567, § 602(b)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106-567, § 602(b)(1), (3), redesignated subsec. (c) as (d) and substituted “subsection (c)(1)” for “subsection (b)(1)”. Former subsec. (d) redesignated (e).

Subsecs. (e) to (h). Pub. L. 106-567, § 602(b)(1), redesignated subsecs. (d) to (g) as (e) to (h), respectively.

1984—Subsec. (f)(2)(C). Pub. L. 98-549 substituted “section 705” for “section 605” in the original to accommodate renumbering of sections in subchapter VI (section 601 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, by section 6(a) of Pub. L. 98-549. Because both sections translate as “section 605 of Title 47”, the amendment by Pub. L. 98-549 resulted in no change in text.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111-118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that:

“(1) IN GENERAL.—Effective February 28, 2010, the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] is amended so that sections 501, 502, and 105(c)(2) [50 U.S.C. 1861, 1862, and 1805(c)(2)] read as they read on October 25, 2001.

“(2) EXCEPTION.—With respect to any particular foreign intelligence investigation that began before the date on which the provisions referred to in paragraph (1) cease to have effect, or with respect to any particular offense or potential offense that began or occurred before the date on which such provisions cease to have effect, such provisions shall continue in effect.”

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L.

108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. B, title IV, § 4005(c), Nov. 2, 2002, 116 Stat. 1812, provided that the amendment made by section 4005(c) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-108, title III, § 314(c), Dec. 28, 2001, 115 Stat. 1402, provided in part that the amendment made by section 314(c)(1) of Pub. L. 107-108 is effective as of Oct. 26, 2001, and as if included in Pub. L. 107-56 as originally enacted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, except where otherwise expressly provided, see section 9(a) of Pub. L. 98-549, set out as a note under section 521 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

§§ 1805a to 1805c. Repealed. Pub. L. 110-261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473

Section 1805a, Pub. L. 95-511, title I, § 105A, as added Pub. L. 110-55, § 2, Aug. 5, 2007, 121 Stat. 552, related to clarification of electronic surveillance of persons outside the United States.

Section 1805b, Pub. L. 95-511, title I, § 105B, as added Pub. L. 110-55, § 2, Aug. 5, 2007, 121 Stat. 552, related to additional procedure for authorizing certain acquisitions concerning persons located outside the United States.

Section 1805c, Pub. L. 95-511, title I, § 105C, as added Pub. L. 110-55, § 3, Aug. 5, 2007, 121 Stat. 555, related to submission to court review of procedures.

EFFECTIVE DATE OF REPEAL

Repeal effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

§ 1806. Use of information

(a) Compliance with minimization procedures; privileged communications; lawful purposes

Information acquired from an electronic surveillance conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any

trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

- (1) the information was unlawfully acquired; or
- (2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this chapter,

the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person

named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

- (1) the fact of the application;
- (2) the period of the surveillance; and
- (3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct electronic surveillance to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1804(a)(7)(B)¹ of this title or the entry of an order under section 1805 of this title.

(Pub. L. 95-511, title I, § 106, Oct. 25, 1978, 92 Stat. 1793; Pub. L. 107-56, title V, § 504(a), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, § 898, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110-261, title I, §§ 106, 110(b)(1), July 10, 2008, 122 Stat. 2462, 2466.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1804(a)(7)(B) of this title, referred to in subsec. (k)(2), was redesignated section 1804(a)(6)(B) of this title by Pub. L. 110-261, title I, § 104(1)(B), July 10, 2008, 122 Stat. 2461.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110-261, § 106, substituted “communication” for “radio communication”.

Subsec. (k)(1)(B). Pub. L. 110-261, § 110(b)(1), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

¹ See References in Text note below.

2002—Subsec. (k)(1). Pub. L. 107-296, in introductory provisions, inserted “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)” after “law enforcement officers”.

2001—Subsec. (k). Pub. L. 107-56 added subsec. (k).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

REPORT ON MECHANISMS FOR DETERMINATIONS OF DISCLOSURE OF INFORMATION FOR LAW ENFORCEMENT PURPOSES

Pub. L. 106-567, title VI, § 604(b), Dec. 27, 2000, 114 Stat. 2853, provided that:

“(1) The Attorney General shall submit to the appropriate committees of Congress a report on the authorities and procedures utilized by the Department of Justice for determining whether or not to disclose information acquired under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for law enforcement purposes.

“(2) In this subsection, the term ‘appropriate committees of Congress’ means the following:

“(A) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

“(B) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.”

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter; and

(b) the total number of such orders and extensions either granted, modified, or denied.

(Pub. L. 95-511, title I, § 107, Oct. 25, 1978, 92 Stat. 1795.)

§ 1808. Report of Attorney General to Congressional committees; limitation on authority or responsibility of information gathering activities of Congressional committees; report of Congressional committees to Congress

(a)(1) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, and the Committee on the Judiciary of the Senate, concerning all electronic surveillance under this subchapter. Nothing in this subchapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they

may need to carry out their respective functions and duties.

(2) Each report under the first sentence of paragraph (1) shall include a description of—

(A) the total number of applications made for orders and extensions of orders approving electronic surveillance under this subchapter where the nature and location of each facility or place at which the electronic surveillance will be directed is unknown;

(B) each criminal case in which information acquired under this chapter has been authorized for use at trial during the period covered by such report; and

(C) the total number of emergency employments of electronic surveillance under section 1805(e) of this title and the total number of subsequent orders approving or denying such electronic surveillance.

(b) On or before one year after October 25, 1978, and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this chapter. Said reports shall include but not be limited to an analysis and recommendations concerning whether this chapter should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.

(Pub. L. 95-511, title I, § 108, Oct. 25, 1978, 92 Stat. 1795; Pub. L. 106-567, title VI, § 604(a), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 109-177, title I, § 108(c), Mar. 9, 2006, 120 Stat. 204; Pub. L. 110-261, title I, § 105(b), July 10, 2008, 122 Stat. 2462.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2008—Subsec. (a)(2)(C). Pub. L. 110-261 substituted “1805(e)” for “1805(f)”.

2006—Subsec. (a)(1). Pub. L. 109-177, § 108(c)(1), inserted “, and the Committee on the Judiciary of the Senate,” after “Senate Select Committee on Intelligence”.

Subsec. (a)(2). Pub. L. 109-177, § 108(c)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Each report under the first sentence of paragraph (1) shall include a description of—

“(A) each criminal case in which information acquired under this chapter has been passed for law enforcement purposes during the period covered by such report; and

“(B) each criminal case in which information acquired under this chapter has been authorized for use at trial during such reporting period.”

2000—Subsec. (a). Pub. L. 106-567 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

§ 1809. Criminal sanctions

(a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title;¹ or

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.¹

(b) Defense

It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Penalties

An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title I, § 109, Oct. 25, 1978, 92 Stat. 1796; Pub. L. 110-261, title I, § 102(b), July 10, 2008, 122 Stat. 2459.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-261 substituted “authorized by this chapter, chapter 119, 121, or 206 of title 18, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 1812 of this title.” for “authorized by statute” in pars. (1) and (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

§ 1810. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined

¹ So in original.

in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

- (a) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (b) punitive damages; and
- (c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

(Pub. L. 95-511, title I, § 110, Oct. 25, 1978, 92 Stat. 1796.)

§ 1811. Authorization during time of war

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title I, § 111, Oct. 25, 1978, 92 Stat. 1796.)

§ 1812. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted

(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).

(Pub. L. 95-511, title I, § 112, as added Pub. L. 110-261, title I, § 102(a), July 10, 2008, 122 Stat. 2459.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

SUBCHAPTER II—PHYSICAL SEARCHES

§ 1821. Definitions

As used in this subchapter:

(1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”,

“sabotage”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, “weapon of mass destruction”, and “State” shall have the same meanings as in section 1801 of this title, except as specifically provided by this subchapter.

(2) “Aggrieved person” means a person whose premises, property, information, or material is the target of physical search or any other person whose premises, property, information, or material was subject to physical search.

(3) “Foreign Intelligence Surveillance Court” means the court established by section 1803(a) of this title.

(4) “Minimization procedures” with respect to physical search, means—

(A) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purposes and technique of the particular physical search, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand such foreign intelligence information or assess its importance;

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(D) notwithstanding subparagraphs (A), (B), and (C), with respect to any physical search approved pursuant to section 1822(a) of this title, procedures that require that no information, material, or property of a United States person shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1824 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(5) “Physical search” means any physical intrusion within the United States into premises or property (including examination of the interior of property by technical means) that is intended to result in a seizure, reproduction, inspection, or alteration of information, material, or property, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, but does not include (A) “electronic surveillance”, as defined in section 1801(f) of this title, or (B) the acquisition by the United States Government of for-

eign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 1801(f) of this title.

(Pub. L. 95-511, title III, § 301, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3443; amended Pub. L. 107-108, title III, § 314(a)(3), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 110-261, title I, § 110(c)(2), July 10, 2008, 122 Stat. 2467.)

PRIOR PROVISIONS

A prior section 301 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

AMENDMENTS

2008—Par. (1). Pub. L. 110-261 which directed the insertion of “weapon of mass destruction,” after “person,” was executed by inserting “‘weapon of mass destruction,’” after “‘person,’” to reflect the probable intent of Congress.

2001—Par. (4)(D). Pub. L. 107-108 substituted “72 hours” for “24 hours”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE

Section 807(c) of Pub. L. 103-359 provided that: “The amendments made by subsections (a) and (b) [enacting this subchapter and amending provisions set out as a note under section 1801 of this title] shall take effect 90 days after the date of enactment of this Act [Oct. 14, 1994], except that any physical search approved by the Attorney General of the United States to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of title III of the Foreign Intelligence Surveillance Act of 1978 [this subchapter] (as added by this Act), if that search is conducted within 180 days after the date of enactment of this Act pursuant to regulations issued by the Attorney General, which were in the possession of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the date of enactment of this Act.”

§ 1822. Authorization of physical searches for foreign intelligence purposes

(a) Presidential authorization

(1) Notwithstanding any other provision of law, the President, acting through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if—

(A) the Attorney General certifies in writing under oath that—

(i) the physical search is solely directed at premises, information, material, or property used exclusively by, or under the open and exclusive control of, a foreign power or powers (as defined in section 1801(a)(1), (2), or (3) of this title);

(ii) there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person; and

(iii) the proposed minimization procedures with respect to such physical search meet the definition of minimization procedures under paragraphs (1) through (4)¹ of section 1821(4) of this title; and

(B) the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days before their effective date, unless the Attorney General determines that immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) A physical search authorized by this subsection may be conducted only in accordance with the certification and minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under the provisions of section 1826 of this title.

(3) The Attorney General shall immediately transmit under seal to the Foreign Intelligence Surveillance Court a copy of the certification. Such certification shall be maintained under security measures established by the Chief Justice of the United States with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the physical search is made under section 1821(4) of this title and section 1823 of this title; or

(B) the certification is necessary to determine the legality of the physical search under section 1825(g) of this title.

(4)(A) With respect to physical searches authorized by this subsection, the Attorney General may direct a specified landlord, custodian, or other specified person to—

(i) furnish all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search; and

(ii) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain.

(B) The Government shall compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid.

¹So in original. Probably should be “subparagraphs (A) through (D)”.

(b) Application for order; authorization

Applications for a court order under this subchapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the Foreign Intelligence Surveillance Court. Notwithstanding any other provision of law, a judge of the court to whom application is made may grant an order in accordance with section 1824 of this title approving a physical search in the United States of the premises, property, information, or material of a foreign power or an agent of a foreign power for the purpose of collecting foreign intelligence information.

(c) Jurisdiction of Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to hear applications for and grant orders approving a physical search for the purpose of obtaining foreign intelligence information anywhere within the United States under the procedures set forth in this subchapter, except that no judge (except when sitting en banc) shall hear the same application which has been denied previously by another judge designated under section 1803(a) of this title. If any judge so designated denies an application for an order authorizing a physical search under this subchapter, such judge shall provide immediately for the record a written statement of each reason for such decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established under section 1803(b) of this title.

(d) Court of review; record; transmittal to Supreme Court

The court of review established under section 1803(b) of this title shall have jurisdiction to review the denial of any application made under this subchapter. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(e) Expeditious conduct of proceedings; security measures for maintenance of records

Judicial proceedings under this subchapter shall be concluded as expeditiously as possible. The record of proceedings under this subchapter, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

(Pub. L. 95-511, title III, § 302, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3444; amended Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110-261, title I, § 109(b)(2)(B), July 10, 2008, 122 Stat. 2465.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-261 inserted “(except when sitting en banc)” after “except that no judge”.

2004—Subsecs. (a)(3), (4)(A)(ii), (e). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

EX. ORD. NO. 12949. FOREIGN INTELLIGENCE PHYSICAL SEARCHES

Ex. Ord. No. 12949, Feb. 9, 1995, 60 F.R. 8169, as amended by Ex. Ord. No. 13383, § 2, July 15, 2005, 70 F.R. 41933; Ex. Ord. No. 13475, § 2, Oct. 7, 2008, 73 F.R. 60095, provided:

By the authority vested in me as President by the Constitution and the laws of the United States, including sections 302 and 303 of the Foreign Intelligence Surveillance Act of 1978 (“Act”) (50 U.S.C. 1801, *et seq.*), as amended by Public Law 103-359 [50 U.S.C. 1822, 1823], and in order to provide for the authorization of physical searches for foreign intelligence purposes as set forth in the Act, it is hereby ordered as follows:

SECTION 1. Pursuant to section 302(a)(1) of the Act, the Attorney General is authorized to approve physical searches, without a court order, to acquire foreign intelligence information for periods of up to one year, if the Attorney General makes the certifications required by that section.

SEC. 2. Pursuant to section 302(b) of the Act, the Attorney General is authorized to approve applications to the Foreign Intelligence Surveillance Court under section 303 of the Act to obtain orders for physical searches for the purpose of collecting foreign intelligence information.

SEC. 3. Pursuant to section 303(a)(6) of the Act, the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by section 303(a)(6) of the Act in support of applications to conduct physical searches:

- (a) Secretary of State;
- (b) Secretary of Defense;
- [(c)] Director of National Intelligence;
- (d) Director of the Federal Bureau of Investigation;
- (e) Deputy Secretary of State;
- (f) Deputy Secretary of Defense;
- (g) Director of the Central Intelligence Agency;
- (h) Principal Deputy Director of National Intelligence; and
- (i) Deputy Director of the Federal Bureau of Investigation.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President, by and with the advice and consent of the Senate. The requirement of the preceding sentence that the named official must be appointed by the President with the advice and consent of the Senate does not apply to the Deputy Director of the Federal Bureau of Investigation.

§ 1823. Application for order**(a) Submission by Federal officer; approval of Attorney General; contents**

Each application for an order approving a physical search under this subchapter shall be

made by a Federal officer in writing upon oath or affirmation to a judge of the Foreign Intelligence Surveillance Court. Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements for such application as set forth in this subchapter. Each application shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the target of the search, and a description of the premises or property to be searched and of the information, material, or property to be seized, reproduced, or altered;

(3) a statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that—

(A) the target of the physical search is a foreign power or an agent of a foreign power;

(B) the premises or property to be searched contains foreign intelligence information; and

(C) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from a foreign power or an agent of a foreign power;

(4) a statement of the proposed minimization procedures;

(5) a statement of the nature of the foreign intelligence sought and the manner in which the physical search is to be conducted;

(6) a certification or certifications by the Assistant to the President for National Security Affairs, an executive branch official or officials designated by the President from among those executive branch officers employed in the area of national security or defense and appointed by the President, by and with the advice and consent of the Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that a significant purpose of the search is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) includes a statement explaining the basis for the certifications required by subparagraphs (C) and (D);

(7) where the physical search involves a search of the residence of a United States person, the Attorney General shall state what investigative techniques have previously been utilized to obtain the foreign intelligence information concerned and the degree to which these techniques resulted in acquiring such information; and

(8) a statement of the facts concerning all previous applications that have been made to any judge under this subchapter involving any of the persons, premises, or property specified

in the application, and the action taken on each previous application.

(b) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(c) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1824 of this title.

(d) Personal review by Attorney General

(1)(A) Upon written request of the Director of the Federal Bureau of Investigation, the Secretary of Defense, the Secretary of State, the Director of National Intelligence, or the Director of the Central Intelligence Agency, the Attorney General shall personally review under subsection (a) of this section an application under that subsection for a target described in section 1801(b)(2) of this title.

(B) Except when disabled or otherwise unavailable to make a request referred to in subparagraph (A), an official referred to in that subparagraph may not delegate the authority to make a request referred to in that subparagraph.

(C) Each official referred to in subparagraph (A) with authority to make a request under that subparagraph shall take appropriate actions in advance to ensure that delegation of such authority is clearly established in the event such official is disabled or otherwise unavailable to make such request.

(2)(A) If as a result of a request under paragraph (1) the Attorney General determines not to approve an application under the second sentence of subsection (a) of this section for purposes of making the application under this section, the Attorney General shall provide written notice of the determination to the official making the request for the review of the application under that paragraph. Except when disabled or otherwise unavailable to make a determination under the preceding sentence, the Attorney General may not delegate the responsibility to make a determination under that sentence. The Attorney General shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event the Attorney General is disabled or otherwise unavailable to make such determination.

(B) Notice with respect to an application under subparagraph (A) shall set forth the modifications, if any, of the application that are necessary in order for the Attorney General to approve the application under the second sentence of subsection (a) of this section for purposes of making the application under this section.

(C) Upon review of any modifications of an application set forth under subparagraph (B), the official notified of the modifications under this paragraph shall modify the application if such official determines that such modification is warranted. Such official shall supervise the making of any modification under this subparagraph. Except when disabled or otherwise unavailable to supervise the making of any modification under the preceding sentence, such official may not delegate the responsibility to su-

pervise the making of any modification under that preceding sentence. Each such official shall take appropriate actions in advance to ensure that delegation of such responsibility is clearly established in the event such official is disabled or otherwise unavailable to supervise the making of such modification.

(Pub. L. 95-511, title III, §303, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3446; amended Pub. L. 106-567, title VI, §603(a), Dec. 27, 2000, 114 Stat. 2852; Pub. L. 107-56, title II, §218, Oct. 26, 2001, 115 Stat. 291; Pub. L. 108-458, title I, §1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 110-261, title I, §107(a), July 10, 2008, 122 Stat. 2462.)

AMENDMENTS

2008—Subsec. (a)(2). Pub. L. 110-261, §107(a)(1)(A)–(C), redesignated par. (3) as (2), struck out “detailed” before “description of the premises”, and struck out former par. (2) which read as follows: “the authority conferred on the Attorney General by the President and the approval of the Attorney General to make the application.”.

Subsec. (a)(3). Pub. L. 110-261, §107(a)(1)(B), (D), redesignated par. (4) as (3) and inserted “or is about to be” before “owned” in subpar. (C). Former par. (3) redesignated (2).

Subsec. (a)(4), (5). Pub. L. 110-261, §107(a)(1)(B), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (a)(6). Pub. L. 110-261, §107(a)(1)(B), (E), redesignated par. (7) as (6) and substituted “Affairs,” for “Affairs or” and “Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—” for “Senate—” in introductory provisions. Former par. (6) redesignated (5).

Subsec. (a)(7) to (9). Pub. L. 110-261, §107(a)(1)(B), redesignated pars. (8) and (9) as (7) and (8), respectively. Former par. (7) redesignated (6).

Subsec. (d)(1)(A). Pub. L. 110-261, §107(a)(2), substituted “the Director of National Intelligence, or the Director of the Central Intelligence Agency” for “or the Director of National Intelligence”.

2004—Subsec. (d)(1)(A). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(7)(B). Pub. L. 107-56 substituted “a significant purpose” for “the purpose”.

2000—Subsec. (d). Pub. L. 106-567 added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

OFFICIALS DESIGNATED TO MAKE CERTIFICATIONS

For provisions listing officials designated by President to make certifications required by subsec. (a)(7) of

this section, see Ex. Ord. No. 12949, §3, Feb. 9, 1995, 60 F.R. 8169, set out as a note under section 1822 of this title.

§ 1824. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1823 of this title, the judge shall enter an ex parte order as requested or as modified approving the physical search if the judge finds that—

(1) the application has been made by a Federal officer and approved by the Attorney General;

(2) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the physical search is a foreign power or an agent of a foreign power, except that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) the premises or property to be searched is or is about to be owned, used, possessed by, or is in transit to or from an agent of a foreign power or a foreign power;

(3) the proposed minimization procedures meet the definition of minimization contained in this subchapter; and

(4) the application which has been filed contains all statements and certifications required by section 1823 of this title, and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1823(a)(6)(E) of this title and any other information furnished under section 1823(c) of this title.

(b) Determination of probable cause

In determining whether or not probable cause exists for purposes of an order under subsection (a)(3)¹ of this section, a judge may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target.

(c) Specifications and directions of orders

An order approving a physical search under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the physical search;

(B) the nature and location of each of the premises or property to be searched;

(C) the type of information, material, or property to be seized, altered, or reproduced;

(D) a statement of the manner in which the physical search is to be conducted and, whenever more than one physical search is authorized under the order, the authorized scope of each search and what minimization procedures shall apply to the information acquired by each search; and

(E) the period of time during which physical searches are approved; and

(2) direct—

¹ See References in Text note below.

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or assistance necessary to accomplish the physical search in such a manner as will protect its secrecy and produce a minimum of interference with the services that such landlord, custodian, or other person is providing the target of the physical search;

(C) that such landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the search or the aid furnished that such person wishes to retain;

(D) that the applicant compensate, at the prevailing rate, such landlord, custodian, or other person for furnishing such aid; and

(E) that the Federal officer conducting the physical search promptly report to the court the circumstances and results of the physical search.

(d) Duration of order; extensions; assessment of compliance

(1) An order issued under this section may approve a physical search for the period necessary to achieve its purpose, or for 90 days, whichever is less, except that (A) an order under this section shall approve a physical search targeted against a foreign power, as defined in paragraph (1), (2), or (3) of section 1801(a) of this title, for the period specified in the application or for one year, whichever is less, and (B) an order under this section for a physical search targeted against an agent of a foreign power who is not a United States person may be for the period specified in the application or for 120 days, whichever is less.

(2) Extensions of an order issued under this subchapter may be granted on the same basis as the original order upon an application for an extension and new findings made in the same manner as required for the original order, except that an extension of an order under this chapter for a physical search targeted against a foreign power, as defined in paragraph (5), (6), or (7) of section 1801(a) of this title, or against a foreign power, as defined in section 1801(a)(4) of this title, that is not a United States person, or against an agent of a foreign power who is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no property of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which a physical search is approved by an order or an extension, or at any time after a physical search is carried out, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(e) Emergency orders

(1) Notwithstanding any other provision of this subchapter, the Attorney General may authorize the emergency employment of a physical search if the Attorney General—

(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

(B) reasonably determines that the factual basis for issuance of an order under this subchapter to approve such physical search exists;

(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

(D) makes an application in accordance with this subchapter to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this subchapter for the issuance of a judicial order be followed.

(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(5) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(6) The Attorney General shall assess compliance with the requirements of paragraph (5).

(f) Retention of applications and orders

Applications made and orders granted under this subchapter shall be retained for a period of at least 10 years from the date of the application.

(Pub. L. 95-511, title III, §304, as added Pub. L. 103-359, title VIII, §807(a)(3), Oct. 14, 1994, 108 Stat. 3447; amended Pub. L. 106-567, title VI, §603(b), Dec. 27, 2000, 114 Stat. 2853; Pub. L. 107-56, title II, §207(a)(2), (b)(2), Oct. 26, 2001, 115 Stat. 282; Pub. L. 107-108, title III, §314(a)(4),

Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, § 105(b), Mar. 9, 2006, 120 Stat. 195; Pub. L. 110-261, title I, §§ 107(b), (c)(1), 110(c)(3), July 10, 2008, 122 Stat. 2463, 2464, 2467.)

REFERENCES IN TEXT

Subsection (a)(3) of this section, referred to in subsec. (b), was redesignated subsection (a)(2) by Pub. L. 110-261, title I, § 107(b)(1)(B), July 10, 2008, 122 Stat. 2463.

This chapter, referred to in subsec. (d)(2), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-261, § 107(b)(1), (c)(1), redesignated pars. (2) to (5) as (1) to (4), respectively, inserted “or is about to be” before “owned” in par. (2)(B), substituted “1823(a)(6)(E)” for “1823(a)(7)(E)” in par. (4), and struck out former par. (1) which read as follows: “the President has authorized the Attorney General to approve applications for physical searches for foreign intelligence purposes;”.

Subsec. (d)(2). Pub. L. 110-261, § 110(c)(3), substituted “paragraph (5), (6), or (7) of section 1801(a)” for “section 1801(a)(5) or (6)”.

Subsec. (e). Pub. L. 110-261, § 107(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to the power of the Attorney General to authorize the emergency employment of a physical search and required an application be made to a judge within 72 hours after the authorization.

2006—Subsec. (d)(1)(B), (2). Pub. L. 109-177 substituted “who is not a United States person” for “as defined in section 1801(b)(1)(A) of this title”.

2004—Subsec. (c)(2)(C). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (d)(1). Pub. L. 107-56, § 207(a)(2), substituted “90 days,” for “forty-five days,” and inserted “(A)” after “except that” and “,” and (B) an order under this section for a physical search targeted against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title may be for the period specified in the application or for 120 days, whichever is less” before period at end.

Subsec. (d)(2). Pub. L. 107-56, § 207(b)(2), inserted “or against an agent of a foreign power as defined in section 1801(b)(1)(A) of this title,” after “not a United States person.”

Subsec. (e)(1)(A)(ii), (3)(C). Pub. L. 107-108 substituted “72 hours” for “24 hours”.

2000—Subsecs. (b) to (f). Pub. L. 106-567 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 1825. Use of information

(a) Compliance with minimization procedures; lawful purposes

Information acquired from a physical search conducted pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this subchapter. No information acquired from a physical search pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Notice of search and identification of property seized, altered, or reproduced

Where a physical search authorized and conducted pursuant to section 1824 of this title involves the residence of a United States person, and, at any time after the search the Attorney General determines there is no national security interest in continuing to maintain the secrecy of the search, the Attorney General shall provide notice to the United States person whose residence was searched of the fact of the search conducted pursuant to this chapter and shall identify any property of such person seized, altered, or reproduced during such search.

(c) Statement for disclosure

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(d) Notification by United States

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from a physical search pursuant to the authority of this subchapter, the United States shall, prior to the trial, hearing, or the other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(e) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof against an aggrieved person any information obtained or derived from a physical search pursuant to the authority of this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or

other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(f) Motion to suppress

(1) Any person against whom evidence obtained or derived from a physical search to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such search on the grounds that—

(A) the information was unlawfully acquired; or

(B) the physical search was not made in conformity with an order of authorization or approval.

(2) Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(g) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (d) or (e) of this section, or whenever a motion is made pursuant to subsection (f) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to a physical search authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from a physical search authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law, if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the physical search as may be necessary to determine whether the physical search of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the physical search, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the physical search.

(h) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (g) of this section determines that the physical search was not lawfully authorized

or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the physical search of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the physical search was lawfully authorized or conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(i) Finality of orders

Orders granting motions or requests under subsection (h) of this section, decisions under this section that a physical search was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the physical search shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(j) Notification of emergency execution of physical search; contents; postponement, suspension, or elimination

(1) If an emergency execution of a physical search is authorized under section 1824(d)¹ of this title and a subsequent order approving the search is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to the search as the judge may determine in his discretion it is in the interests of justice to serve, notice of—

(A) the fact of the application;

(B) the period of the search; and

(C) the fact that during the period information was or was not obtained.

(2) On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed 90 days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(k) Coordination with law enforcement on national security matters

(1) Federal officers who conduct physical searches to acquire foreign intelligence information under this subchapter may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision) to coordinate efforts to investigate or protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage, international terrorism, or the international proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

¹ See References in Text note below.

(2) Coordination authorized under paragraph (1) shall not preclude the certification required by section 1823(a)(6) of this title or the entry of an order under section 1824 of this title.

(Pub. L. 95-511, title III, § 305, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3449; amended Pub. L. 107-56, title V, § 504(b), Oct. 26, 2001, 115 Stat. 364; Pub. L. 107-296, title VIII, § 899, Nov. 25, 2002, 116 Stat. 2258; Pub. L. 110-261, title I, §§ 107(c)(2), 110(b)(2), July 10, 2008, 122 Stat. 2464, 2466.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 1824(d) of this title, referred to in subsec. (j)(1), was redesignated section 1824(e) of this title by Pub. L. 106-567, title VI, § 603(b)(1), Dec. 27, 2000, 114 Stat. 2853.

AMENDMENTS

2008—Subsec. (k)(1)(B). Pub. L. 110-261, § 110(b)(2), substituted “sabotage, international terrorism, or the international proliferation of weapons of mass destruction” for “sabotage or international terrorism”.

Subsec. (k)(2). Pub. L. 110-261, § 107(c)(2), substituted “1823(a)(6)” for “1823(a)(7)”.

2002—Subsec. (k)(1). Pub. L. 107-296, in introductory provision, inserted “or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)” after “law enforcement officers”.

2001—Subsec. (k). Pub. L. 107-56 added subsec. (k).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 1826. Congressional oversight

On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the Senate, concerning all physical searches conducted pursuant to this subchapter. On a semiannual basis the Attorney General shall also provide to those committees and the Committee on the Judiciary of the House of Representatives a report setting forth with respect to the preceding six-month period—

(1) the total number of applications made for orders approving physical searches under this subchapter;

(2) the total number of such orders either granted, modified, or denied;

(3) the number of physical searches which involved searches of the residences, offices, or

personal property of United States persons, and the number of occasions, if any, where the Attorney General provided notice pursuant to section 1825(b) of this title; and

(4) the total number of emergency physical searches authorized by the Attorney General under section 1824(e) of this title and the total number of subsequent orders approving or denying such physical searches.

(Pub. L. 95-511, title III, § 306, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3451; amended Pub. L. 109-177, title I, § 109(a), Mar. 9, 2006, 120 Stat. 204.)

AMENDMENTS

2006—Pub. L. 109-177, § 109(a)(1), (2), in introductory provisions, inserted “, and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate” and substituted “and the Committee on the Judiciary of the House of Representatives” for “and the Committees on the Judiciary of the House of Representatives and the Senate”.

Par. (4). Pub. L. 109-177, § 109(a)(3)–(5), added par. (4).

§ 1827. Penalties

(a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) under color of law for the purpose of obtaining foreign intelligence information, executes a physical search within the United States except as authorized by statute; or

(2) discloses or uses information obtained under color of law by physical search within the United States, knowing or having reason to know that the information was obtained through physical search not authorized by statute, for the purpose of obtaining intelligence information.

(b) Defense

It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the physical search was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Fine or imprisonment

An offense described in this section is punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title III, § 307, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

§ 1828. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A), respectively, of this title, whose premises, property, information, or material has been subjected to a physical search within the United States or about whom information obtained by such a physical

search has been disclosed or used in violation of section 1827 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

- (1) actual damages, but not less than liquidated damages of \$1,000 or \$100 per day for each day of violation, whichever is greater;
- (2) punitive damages; and
- (3) reasonable attorney's fees and other investigative and litigation costs reasonably incurred.

(Pub. L. 95-511, title III, § 308, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

§ 1829. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General, may authorize physical searches without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title III, § 309, as added Pub. L. 103-359, title VIII, § 807(a)(3), Oct. 14, 1994, 108 Stat. 3452.)

SUBCHAPTER III—PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES

§ 1841. Definitions

As used in this subchapter:

- (1) The terms “foreign power”, “agent of a foreign power”, “international terrorism”, “foreign intelligence information”, “Attorney General”, “United States person”, “United States”, “person”, and “State” shall have the same meanings as in section 1801 of this title.
- (2) The terms “pen register” and “trap and trace device” have the meanings given such terms in section 3127 of title 18.
- (3) The term “aggrieved person” means any person—

(A) whose telephone line was subject to the installation or use of a pen register or trap and trace device authorized by this subchapter; or

(B) whose communication instrument or device was subject to the use of a pen register or trap and trace device authorized by this subchapter to capture incoming electronic or other communications impulses.

(Pub. L. 95-511, title IV, § 401, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2404.)

PRIOR PROVISIONS

A prior section 401 of Pub. L. 95-511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110-261.

§ 1842. Pen registers and trap and trace devices for foreign intelligence and international terrorism investigations

(a) Application for authorization or approval

(1) Notwithstanding any other provision of law, the Attorney General or a designated attorney for the Government may make an applica-

tion for an order or an extension of an order authorizing or approving the installation and use of a pen register or trap and trace device for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution which is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(2) The authority under paragraph (1) is in addition to the authority under subchapter I of this chapter to conduct the electronic surveillance referred to in that paragraph.

(b) Form of application; recipient

Each application under this section shall be in writing under oath or affirmation to—

(1) a judge of the court established by section 1803(a) of this title; or

(2) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications for and grant orders approving the installation and use of a pen register or trap and trace device on behalf of a judge of that court.

(c) Executive approval; contents of application

Each application under this section shall require the approval of the Attorney General, or a designated attorney for the Government, and shall include—

(1) the identity of the Federal officer seeking to use the pen register or trap and trace device covered by the application; and

(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(d) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the installation and use of a pen register or trap and trace device if the judge finds that the application satisfies the requirements of this section.

(2) An order issued under this section—

(A) shall specify—

(i) the identity, if known, of the person who is the subject of the investigation;

(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied; and

(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility

to which the pen register or trap and trace device is to be attached or applied and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(B) shall direct that—

(i) upon request of the applicant, the provider of a wire or electronic communication service, landlord, custodian, or other person shall furnish any information, facilities, or technical assistance necessary to accomplish the installation and operation of the pen register or trap and trace device in such a manner as will protect its secrecy and produce a minimum amount of interference with the services that such provider, landlord, custodian, or other person is providing the person concerned;

(ii) such provider, landlord, custodian, or other person—

(I) shall not disclose the existence of the investigation or of the pen register or trap and trace device to any person unless or until ordered by the court; and

(II) shall maintain, under security procedures approved by the Attorney General and the Director of National Intelligence pursuant to section 1805(b)(2)(C)¹ of this title, any records concerning the pen register or trap and trace device or the aid furnished; and

(iii) the applicant shall compensate such provider, landlord, custodian, or other person for reasonable expenses incurred by such provider, landlord, custodian, or other person in providing such information, facilities, or technical assistance; and

(C) shall direct that, upon the request of the applicant, the provider of a wire or electronic communication service shall disclose to the Federal officer using the pen register or trap and trace device covered by the order—

(i) in the case of the customer or subscriber using the service covered by the order (for the period specified by the order)—

(I) the name of the customer or subscriber;

(II) the address of the customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of the customer or subscriber, including any temporarily assigned network address or associated routing or transmission information;

(IV) the length of the provision of service by such provider to the customer or subscriber and the types of services utilized by the customer or subscriber;

(V) in the case of a provider of local or long distance telephone service, any local or long distance telephone records of the customer or subscriber;

(VI) if applicable, any records reflecting period of usage (or sessions) by the customer or subscriber; and

(VII) any mechanisms and sources of payment for such service, including the number of any credit card or bank account utilized for payment for such service; and

(ii) if available, with respect to any customer or subscriber of incoming or outgoing communications to or from the service covered by the order—

(I) the name of such customer or subscriber;

(II) the address of such customer or subscriber;

(III) the telephone or instrument number, or other subscriber number or identifier, of such customer or subscriber, including any temporarily assigned network address or associated routing or transmission information; and

(IV) the length of the provision of service by such provider to such customer or subscriber and the types of services utilized by such customer or subscriber.

(e) Time limitation

(1) Except as provided in paragraph (2), an order issued under this section shall authorize the installation and use of a pen register or trap and trace device for a period not to exceed 90 days. Extensions of such an order may be granted, but only upon an application for an order under this section and upon the judicial finding required by subsection (d) of this section. The period of extension shall be for a period not to exceed 90 days.

(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.

(f) Cause of action barred

No cause of action shall lie in any court against any provider of a wire or electronic communication service, landlord, custodian, or other person (including any officer, employee, agent, or other specified person thereof) that furnishes any information, facilities, or technical assistance under subsection (d) of this section in accordance with the terms of an order issued under this section.

(g) Furnishing of results

Unless otherwise ordered by the judge, the results of a pen register or trap and trace device shall be furnished at reasonable intervals during regular business hours for the duration of the order to the authorized Government official or officials.

(Pub. L. 95-511, title IV, § 402, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2405; amended Pub. L. 107-56, title II, § 214(a), Oct. 26, 2001, 115 Stat. 286; Pub. L. 107-108, title III, § 314(a)(5), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 108-458, title I, § 1071(e), Dec. 17, 2004, 118 Stat. 3691; Pub. L. 109-177, title I, §§ 105(c), 128(a), Mar. 9, 2006, 120 Stat. 195, 228.)

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(1), is set out as a note under section 401 of this title.

Section 1805(b)(2)(C) of this title, referred to in subsec. (d)(2)(B)(ii)(II), was redesignated section 1805(c)(2)(C) of this title by Pub. L. 106-567, title VI, § 602(b)(1), Dec. 27, 2000, 114 Stat. 2851.

¹ See References in Text note below.

AMENDMENTS

2006—Subsec. (d)(2)(A). Pub. L. 109-177, § 128(a)(1), inserted “and” at end of cl. (ii) and substituted semicolon for period at end of cl. (iii).

Subsec. (d)(2)(C). Pub. L. 109-177, § 128(a)(2), (3), added subpar. (C).

Subsec. (e). Pub. L. 109-177, § 105(c), designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), an order issued” for “An order issued”, and added par. (2).

2004—Subsec. (d)(2)(B)(ii)(II). Pub. L. 108-458 substituted “Director of National Intelligence” for “Director of Central Intelligence”.

2001—Subsec. (a)(1). Pub. L. 107-56, § 214(a)(1), substituted “for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “for any investigation to gather foreign intelligence information or information concerning international terrorism”.

Subsec. (c)(1). Pub. L. 107-108, § 314(a)(5)(A), inserted “and” after semicolon at end.

Subsec. (c)(2). Pub. L. 107-56, § 214(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “a certification by the applicant that the information likely to be obtained is relevant to an ongoing foreign intelligence or international terrorism investigation being conducted by the Federal Bureau of Investigation under guidelines approved by the Attorney General; and”.

Subsec. (c)(3). Pub. L. 107-56, § 214(a)(3), struck out par. (3) which read as follows: “information which demonstrates that there is reason to believe that the telephone line to which the pen register or trap and trace device is to be attached, or the communication instrument or device to be covered by the pen register or trap and trace device, has been or is about to be used in communication with—

“(A) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States; or

“(B) a foreign power or agent of a foreign power under circumstances giving reason to believe that the communication concerns or concerned international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal laws of the United States.”

Subsec. (d)(2)(A). Pub. L. 107-56, § 214(a)(4), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “shall specify—

“(i) the identity, if known, of the person who is the subject of the foreign intelligence or international terrorism investigation;

“(ii) in the case of an application for the installation and use of a pen register or trap and trace device with respect to a telephone line—

“(I) the identity, if known, of the person to whom is leased or in whose name the telephone line is listed; and

“(II) the number and, if known, physical location of the telephone line; and

“(iii) in the case of an application for the use of a pen register or trap and trace device with respect to a communication instrument or device not covered by clause (ii)—

“(I) the identity, if known, of the person who owns or leases the instrument or device or in whose name the instrument or device is listed; and

“(II) the number of the instrument or device; and”.

Subsec. (f). Pub. L. 107-108, § 314(a)(5)(B), substituted “terms of an order issued” for “terms of a court”.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108-458 take effect on Apr. 21, 2005, see Memo-

randum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of this title.

Amendment by Pub. L. 108-458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108-458, set out in an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of this title.

§ 1843. Authorization during emergencies

(a) Requirements for authorization

Notwithstanding any other provision of this subchapter, when the Attorney General makes a determination described in subsection (b) of this section, the Attorney General may authorize the installation and use of a pen register or trap and trace device on an emergency basis to gather foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution if—

(1) a judge referred to in section 1842(b) of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to install and use the pen register or trap and trace device, as the case may be, on an emergency basis; and

(2) an application in accordance with section 1842 of this title is made to such judge as soon as practicable, but not more than 7 days, after the Attorney General authorizes the installation and use of the pen register or trap and trace device, as the case may be, under this section.

(b) Determination of emergency and factual basis

A determination under this subsection is a reasonable determination by the Attorney General that—

(1) an emergency requires the installation and use of a pen register or trap and trace device to obtain foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution before an order authorizing the installation and use of the pen register or trap and trace device, as the case may be, can with due diligence be obtained under section 1842 of this title; and

(2) the factual basis for issuance of an order under such section 1842 of this title to approve the installation and use of the pen register or trap and trace device, as the case may be, exists.

(c) Effect of absence of order

(1) In the absence of an order applied for under subsection (a)(2) of this section approving the installation and use of a pen register or trap and trace device authorized under this section, the installation and use of the pen register or trap

and trace device, as the case may be, shall terminate at the earlier of—

- (A) when the information sought is obtained;
- (B) when the application for the order is denied under section 1842 of this title; or
- (C) 7 days after the time of the authorization by the Attorney General.

(2) In the event that an application for an order applied for under subsection (a)(2) of this section is denied, or in any other case where the installation and use of a pen register or trap and trace device under this section is terminated and no order under section 1842 of this title is issued approving the installation and use of the pen register or trap and trace device, as the case may be, no information obtained or evidence derived from the use of the pen register or trap and trace device, as the case may be, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from the use of the pen register or trap and trace device, as the case may be, shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(Pub. L. 95-511, title IV, § 403, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2407; amended Pub. L. 107-56, title II, § 214(b), Oct. 26, 2001, 115 Stat. 287; Pub. L. 110-261, title I, § 108, July 10, 2008, 122 Stat. 2464.)

AMENDMENTS

2008—Subsecs. (a)(2), (c)(1)(C). Pub. L. 110-261 substituted “7 days” for “48 hours”.

2001—Subsec. (a). Pub. L. 107-56, § 214(b)(1), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism” in introductory provisions.

Subsec. (b)(1). Pub. L. 107-56, § 214(b)(2), substituted “foreign intelligence information not concerning a United States person or information to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution” for “foreign intelligence information or information concerning international terrorism”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-261 effective July 10, 2008, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, see section 402 of Pub. L. 110-261, set out as an Effective Date of 2008 Amendment note under section 1801 of this title.

§ 1844. Authorization during time of war

Notwithstanding any other provision of law, the President, through the Attorney General,

may authorize the use of a pen register or trap and trace device without a court order under this subchapter to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by Congress.

(Pub. L. 95-511, title IV, § 404, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2408.)

§ 1845. Use of information

(a) In general

(1) Information acquired from the use of a pen register or trap and trace device installed pursuant to this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the provisions of this section.

(2) No information acquired from a pen register or trap and trace device installed and used pursuant to this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Disclosure for law enforcement purposes

No information acquired pursuant to this subchapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification of intended disclosure by United States

Whenever the United States intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the United States shall, before the trial, hearing, or the other proceeding or at a reasonable time before an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the United States intends to so disclose or so use such information.

(d) Notification of intended disclosure by State or political subdivision

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the State or political subdivision thereof against an aggrieved person any information obtained or derived from the use of a pen register or trap and trace device pursuant to this subchapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

(1) Any aggrieved person against whom evidence obtained or derived from the use of a pen register or trap and trace device is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, or a State or political subdivision thereof, may move to suppress the evidence obtained or derived from the use of the pen register or trap and trace device, as the case may be, on the grounds that—

(A) the information was unlawfully acquired; or

(B) the use of the pen register or trap and trace device, as the case may be, was not made in conformity with an order of authorization or approval under this subchapter.

(2) A motion under paragraph (1) shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the aggrieved person concerned was not aware of the grounds of the motion.

(f) In camera and ex parte review

(1) Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to the use of a pen register or trap and trace device authorized by this subchapter or to discover, obtain, or suppress evidence or information obtained or derived from the use of a pen register or trap and trace device authorized by this subchapter, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority shall, notwithstanding any other provision of law and if the Attorney General files an affidavit under oath that disclosure or any adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the use of the pen register or trap and trace device, as the case may be, as may be necessary to determine whether the use of the pen register or trap and trace device, as the case may be, was lawfully authorized and conducted.

(2) In making a determination under paragraph (1), the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the use of the pen register or trap and trace device, as the case may be, or may require the Attorney General to provide to the aggrieved person a summary of such materials, only where such disclosure is necessary to make an accurate determination of the legality of the use of the pen register or trap and trace device, as the case may be.

(g) Effect of determination of lawfulness

(1) If the United States district court determines pursuant to subsection (f) of this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, the court may, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from the use of the pen register or trap and trace device, as the case may be, or otherwise grant the motion of the aggrieved person.

(2) If the court determines that the use of the pen register or trap and trace device, as the case may be, was lawfully authorized or conducted, it may deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Binding final orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that the use of a pen register or trap and trace device was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to the installation and use of a pen register or trap and trace device shall be final orders and binding upon all courts of the United States and the several States except a United States Court of Appeals or the Supreme Court.

(Pub. L. 95-511, title IV, § 405, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2408.)

§ 1846. Congressional oversight

(a) On a semiannual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, concerning all uses of pen registers and trap and trace devices pursuant to this subchapter.

(b) On a semiannual basis, the Attorney General shall also provide to the committees referred to in subsection (a) of this section and to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period—

(1) the total number of applications made for orders approving the use of pen registers or trap and trace devices under this subchapter;

(2) the total number of such orders either granted, modified, or denied; and

(3) the total number of pen registers and trap and trace devices whose installation and use was authorized by the Attorney General on an emergency basis under section 1843 of this title, and the total number of subsequent orders approving or denying the installation and use of such pen registers and trap and trace devices.

(Pub. L. 95-511, title IV, § 406, as added Pub. L. 105-272, title VI, § 601(2), Oct. 20, 1998, 112 Stat. 2410; amended Pub. L. 109-177, title I, §§ 109(b), 128(b), Mar. 9, 2006, 120 Stat. 204, 229.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-177, §128(b), inserted “, and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,” after “Select Committee on Intelligence of the Senate”.

Subsec. (b)(3). Pub. L. 109-177, §109(b), added par. (3).

SUBCHAPTER IV—ACCESS TO CERTAIN BUSINESS RECORDS FOR FOREIGN INTELLIGENCE PURPOSES

§ 1861. Access to certain business records for foreign intelligence and international terrorism investigations

(a) Application for order; conduct of investigation generally

(1) Subject to paragraph (3), the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.

(2) An investigation conducted under this section shall—

(A) be conducted under guidelines approved by the Attorney General under Executive Order 12333 (or a successor order); and

(B) not be conducted of a United States person solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) In the case of an application for an order requiring the production of library circulation records, library patron lists, book sales records, book customer lists, firearms sales records, tax return records, educational records, or medical records containing information that would identify a person, the Director of the Federal Bureau of Investigation may delegate the authority to make such application to either the Deputy Director of the Federal Bureau of Investigation or the Executive Assistant Director for National Security (or any successor position). The Deputy Director or the Executive Assistant Director may not further delegate such authority.

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28, who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the production of tangible things under this section on behalf of a judge of that court; and

(2) shall include—

(A) a statement of facts showing that there are reasonable grounds to believe that

the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

(i) a foreign power or an agent of a foreign power;

(ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and

(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.

(c) Ex parte judicial order of approval

(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of tangible things. Such order shall direct that minimization procedures adopted pursuant to subsection (g) be followed.

(2) An order under this subsection—

(A) shall describe the tangible things that are ordered to be produced with sufficient particularity to permit them to be fairly identified;

(B) shall include the date on which the tangible things must be provided, which shall allow a reasonable period of time within which the tangible things can be assembled and made available;

(C) shall provide clear and conspicuous notice of the principles and procedures described in subsection (d);

(D) may only require the production of a tangible thing if such thing can be obtained with a subpoena duces tecum issued by a court of the United States in aid of a grand jury investigation or with any other order issued by a court of the United States directing the production of records or tangible things; and

(E) shall not disclose that such order is issued for purposes of an investigation described in subsection (a).

(d) Nondisclosure

(1) No person shall disclose to any other person that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section, other than to—

(A) those persons to whom disclosure is necessary to comply with such order;

(B) an attorney to obtain legal advice or assistance with respect to the production of things in response to the order; or

(C) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

(2)(A) A person to whom disclosure is made pursuant to paragraph (1) shall be subject to the nondisclosure requirements applicable to a person to whom an order is directed under this section in the same manner as such person.

(B) Any person who discloses to a person described in subparagraph (A), (B), or (C) of paragraph (1) that the Federal Bureau of Investigation has sought or obtained tangible things pursuant to an order under this section shall notify such person of the nondisclosure requirements of this subsection.

(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of paragraph (1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.

(e) Liability for good faith disclosure; waiver

A person who, in good faith, produces tangible things under an order pursuant to this section shall not be liable to any other person for such production. Such production shall not be deemed to constitute a waiver of any privilege in any other proceeding or context.

(f) Judicial review of FISA orders

(1) In this subsection—

(A) the term “production order” means an order to produce any tangible thing under this section; and

(B) the term “nondisclosure order” means an order imposed under subsection (d).

(2)(A)(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 1803(e)(1) of this title. Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 1803(e)(1) of this title.

(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 1803(e)(1) of this title. Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 1803(e)(2) of this title.

(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order

shall be stayed pending review pursuant to paragraph (3).

(B) A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

(C)(i) A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

(iii) If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

(D) Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 1803(b) of this title, which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(4) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions thereof, which may include classified information.

(g) Minimization procedures

(1) In general

Not later than 180 days after March 9, 2006, the Attorney General shall adopt specific minimization procedures governing the reten-

tion and dissemination by the Federal Bureau of Investigation of any tangible things, or information therein, received by the Federal Bureau of Investigation in response to an order under this subchapter.

(2) Defined

In this section, the term “minimization procedures” means—

(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the production of tangible things, to minimize the retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 1801(e)(1) of this title, shall not be disseminated in a manner that identifies any United States person, without such person’s consent, unless such person’s identity is necessary to understand foreign intelligence information or assess its importance; and

(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.

(h) Use of information

Information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures adopted pursuant to subsection (g). No otherwise privileged information acquired from tangible things received by the Federal Bureau of Investigation in accordance with the provisions of this subchapter shall lose its privileged character. No information acquired from tangible things received by the Federal Bureau of Investigation in response to an order under this subchapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(Pub. L. 95–511, title V, § 501, as added Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 287; amended Pub. L. 107–108, title III, § 314(a)(6), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109–177, title I, §§ 102(b)(1), 106(a)–(e), (f)(2), (g), Mar. 9, 2006, 120 Stat. 195–198; Pub. L. 109–178, §§ 3, 4(a), Mar. 9, 2006, 120 Stat. 278, 280; Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SECTION

Pub. L. 109–177, title I, § 102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111–118, div. B, § 1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, this section is amended to read as it read on Oct. 25, 2001:

§ 1861. Definitions

As used in this subchapter:

(1) *The terms “foreign power”, “agent of a foreign power”, “foreign intelligence information”, “international terrorism”, and “Attorney General” shall have the same meanings as in section 1801 of this title.*

(2) *The term “common carrier” means any person or entity transporting people or property by land, rail, water, or air for compensation.*

(3) *The term “physical storage facility” means any business or entity that provides space for the storage of goods or materials, or services related to the storage of goods or materials, to the public or any segment thereof.*

(4) *The term “public accommodation facility” means any inn, hotel, motel, or other establishment that provides lodging to transient guests.*

(5) *The term “vehicle rental facility” means any person or entity that provides vehicles for rent, lease, loan, or other similar use to the public or any segment thereof.*

REFERENCES IN TEXT

Executive Order No. 12333, referred to in subsec. (a)(2)(A), is set out as a note under section 401 of this title.

PRIOR PROVISIONS

A prior section 1861, Pub. L. 95–511, title V, § 501, as added Pub. L. 105–272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2410, defined terms used in this subchapter, prior to repeal by Pub. L. 107–56, title II, § 215, Oct. 26, 2001, 115 Stat. 287. See Amendment of Section note above.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–177, § 106(a)(1), substituted “Subject to paragraph (3), the Director” for “The Director”.

Subsec. (a)(3). Pub. L. 109–177, § 106(a)(2), added par. (3).

Subsec. (b)(2). Pub. L. 109–177, § 106(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “shall specify that the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) of this section to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities.”

Subsec. (c). Pub. L. 109–177, § 106(c), (d), amended subsec. (c) generally. Prior to amendment, text read as follows:

“(1) Upon an application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application meets the requirements of this section.

“(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.”

Subsec. (d). Pub. L. 109–177, § 106(e), amended subsec. (d) generally. Prior to amendment, text read as follows: “No person shall disclose to any other person (other than those persons necessary to produce the tangible things under this section) that the Federal Bureau of Investigation has sought or obtained tangible things under this section.”

Subsec. (d)(2)(C). Pub. L. 109–178, § 4(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, but in no circumstance shall a person be required to inform the Director or such designee that the person intends to consult an attorney to obtain legal advice or legal assistance.”

Subsec. (f). Pub. L. 109-178, §3, amended subsec. (f) generally. Prior to amendment, subsec. (f) provided for judicial proceedings relating to challenging an order to produce tangible things.

Pub. L. 109-177, §106(f)(2), added subsec. (f).

Subsecs. (g), (h). Pub. L. 109-177, §106(g), added subsecs. (g) and (h).

2001—Subsec. (a)(1). Pub. L. 107-108 inserted “to obtain foreign intelligence information not concerning a United States person or” after “an investigation”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Feb. 28, 2010, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2010, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2010, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

§ 1862. Congressional oversight

(a) On a¹ annual basis, the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate concerning all requests for the production of tangible things under section 1861 of this title.

(b) In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year—

(1) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title;

(2) the total number of such orders either granted, modified, or denied; and

(3) the number of such orders either granted, modified, or denied for the production of each of the following:

(A) Library circulation records, library patron lists, book sales records, or book customer lists.

(B) Firearms sales records.

(C) Tax return records.

(D) Educational records.

(E) Medical records containing information that would identify a person.

(c)(1) In April of each year, the Attorney General shall submit to Congress a report setting forth with respect to the preceding year—

(A) the total number of applications made for orders approving requests for the production of tangible things under section 1861 of this title; and

(B) the total number of such orders either granted, modified, or denied.

(2) Each report under this subsection shall be submitted in unclassified form.

(Pub. L. 95-511, title V, §502, as added Pub. L. 107-56, title II, §215, Oct. 26, 2001, 115 Stat. 288; amended Pub. L. 107-108, title III, §314(a)(7), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 109-177, title I,

§§102(b)(1), 106(h), Mar. 9, 2006, 120 Stat. 195, 199; Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470.)

AMENDMENT OF SECTION

Pub. L. 109-177, title I, §102(b), Mar. 9, 2006, 120 Stat. 195, as amended by Pub. L. 111-118, div. B, §1004(a), Dec. 19, 2009, 123 Stat. 3470, provided that, effective Feb. 28, 2010, with certain exceptions, this section is amended to read as it read on Oct. 25, 2001:

§ 1862. Access to certain business records for foreign intelligence and international terrorism investigations

(a) Application for authorization

The Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order authorizing a common carrier, public accommodation facility, physical storage facility, or vehicle rental facility to release records in its possession for an investigation to gather foreign intelligence information or an investigation concerning international terrorism which investigation is being conducted by the Federal Bureau of Investigation under such guidelines as the Attorney General approves pursuant to Executive Order No. 12333, or a successor order.

(b) Recipient and contents of application

Each application under this section—

(1) shall be made to—

(A) a judge of the court established by section 1803(a) of this title; or

(B) a United States Magistrate Judge under chapter 43 of title 28 who is publicly designated by the Chief Justice of the United States to have the power to hear applications and grant orders for the release of records under this section on behalf of a judge of that court; and

(2) shall specify that—

(A) the records concerned are sought for an investigation described in subsection (a); and

(B) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.

(c) Ex parte judicial order of approval

(1) Upon application made pursuant to this section, the judge shall enter an ex parte order as requested, or as modified, approving the release of records if the judge finds that the application satisfies the requirements of this section.

(2) An order under this subsection shall not disclose that it is issued for purposes of an investigation described in subsection (a) of this section.

(d) Compliance; nondisclosure

(1) Any common carrier, public accommodation facility, physical storage facility, or vehicle rental facility shall comply with an order under subsection (c).

(2) No common carrier, public accommodation facility, physical storage facility, or vehicle rental facility, or officer, employee, or agent thereof, shall disclose to any person (other than those officers, agents, or employees of such common carrier, public accommodation facility, physical storage facility, or vehicle rental facility necessary to fulfill the requirement to disclose information to the Federal Bu-

¹ So in original. Probably should be “an”.

reau of Investigation under this section) that the Federal Bureau of Investigation has sought or obtained records pursuant to an order under this section.

PRIOR PROVISIONS

A prior section 1862, Pub. L. 95-511, title V, § 502, as added Pub. L. 105-272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2411, related to access to certain business records for foreign intelligence and international terrorism investigations, prior to repeal by Pub. L. 107-56, title II, § 215, Oct. 26, 2001, 115 Stat. 287. See section 1861 of this title and see Amendment of Section note above.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-177, § 106(h)(1), substituted “annual basis” for “semiannual basis” and inserted “and the Committee on the Judiciary” after “and the Select Committee on Intelligence”.

Subsec. (b). Pub. L. 109-177, § 106(h)(2)(A), in introductory provisions, substituted “In April of each year, the Attorney General shall submit to the House and Senate Committees on the Judiciary and the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence a report setting forth with respect to the preceding calendar year” for “On a semiannual basis, the Attorney General shall provide to the Committees on the Judiciary of the House of Representatives and the Senate a report setting forth with respect to the preceding 6-month period”.

Subsec. (b)(3). Pub. L. 109-177, § 106(h)(2)(B)–(D), added par. (3).

Subsec. (c). Pub. L. 109-177, § 106(h)(3), added subsec. (c).

2001—Subsecs. (a), (b)(1). Pub. L. 107-108 substituted “section 1861 of this title” for “section 1842 of this title”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 102(b)(1) of Pub. L. 109-177 effective Feb. 28, 2010, except that former provisions to continue in effect with respect to any particular foreign intelligence investigation that began before Feb. 28, 2010, or with respect to any particular offense or potential offense that began or occurred before Feb. 28, 2010, see section 102(b) of Pub. L. 109-177, set out as a note under section 1805 of this title.

§ 1863. Repealed. Pub. L. 107-56, title II, § 215, Oct. 26, 2001, 115 Stat. 287

Section, Pub. L. 95-511, title V, § 503, as added Pub. L. 105-272, title VI, § 602, Oct. 20, 1998, 112 Stat. 2412, related to congressional oversight. See section 1862 of this title.

SUBCHAPTER V—REPORTING REQUIREMENT

§ 1871. Semiannual report of the Attorney General

(a) Report

On a semiannual basis, the Attorney General shall submit to the Permanent Select Committee on Intelligence of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Committees on the Judiciary of the House of Representatives and the Senate, in a manner consistent with the protection of the national security, a report setting forth with respect to the preceding 6-month period—

(1) the aggregate number of persons targeted for orders issued under this chapter, including a breakdown of those targeted for—

(A) electronic surveillance under section 1805 of this title;

(B) physical searches under section 1824 of this title;

(C) pen registers under section 1842 of this title;

(D) access to records under section 1861 of this title;

(E) acquisitions under section 1881b of this title; and

(F) acquisitions under section 1881c of this title;

(2) the number of individuals covered by an order issued pursuant to section 1801(b)(1)(C) of this title;

(3) the number of times that the Attorney General has authorized that information obtained under this chapter may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding;

(4) a summary of significant legal interpretations of this chapter involving matters before the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review, including interpretations presented in applications or pleadings filed with the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review by the Department of Justice; and

(5) copies of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretation of the provisions of this chapter.

(b) Frequency

The first report under this section shall be submitted not later than 6 months after December 17, 2004. Subsequent reports under this section shall be submitted semi-annually thereafter.

(c) Submissions to Congress

The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this chapter, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

(2) a copy of each such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on July 10, 2008, and not previously submitted in a report under subsection (a).

(d) Protection of national security

The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national

security of the United States and are limited to sensitive sources and methods information or the identities of targets.

(e) Definitions

In this section:

(1) Foreign Intelligence Surveillance Court

The term “Foreign Intelligence Surveillance Court” means the court established under section 1803(a) of this title.

(2) Foreign Intelligence Surveillance Court of Review

The term “Foreign Intelligence Surveillance Court of Review” means the court established under section 1803(b) of this title.

(Pub. L. 95–511, title VI, § 601, as added Pub. L. 108–458, title VI, § 6002(a)(2), Dec. 17, 2004, 118 Stat. 3743; amended Pub. L. 110–261, title I, §§ 101(c)(2), 103, title IV, § 403(b)(2)(B), July 10, 2008, 122 Stat. 2459, 2460, 2474.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 110–261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, subsection (a)(1) of this section is amended to read as it read on the day before July 10, 2008.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1), was in the original “this Act”, meaning Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

PRIOR PROVISIONS

A prior section 601 of Pub. L. 95–511 was renumbered section 701 and was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.

AMENDMENTS

2008—Subsec. (a)(1)(E), (F). Pub. L. 110–261, § 101(c)(2), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 110–261, § 103(a), substituted “, orders,” for “(not including orders)”.

Subsecs. (c), (d). Pub. L. 110–261, § 103(b), added subsecs. (c) and (d).

Subsec. (e). Pub. L. 110–261, § 103(c), added subsec. (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–261, title IV, § 403(b)(2), July 10, 2008, 122 Stat. 2474, provided that except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the amendments made by section 403(b)(2) are effective Dec. 31, 2012.

SUBCHAPTER VI—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

§ 1881. Definitions

(a) In general

The terms “agent of a foreign power”, “Attorney General”, “contents”, “electronic surveillance”, “foreign intelligence information”, “foreign power”, “person”, “United States”, and “United States person” have the meanings given such terms in section 1801 of this title, except as specifically provided in this subchapter.

(b) Additional definitions

(1) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) Foreign Intelligence Surveillance Court; Court

The terms “Foreign Intelligence Surveillance Court” and “Court” mean the court established under section 1803(a) of this title.

(3) Foreign Intelligence Surveillance Court of Review; Court of Review

The terms “Foreign Intelligence Surveillance Court of Review” and “Court of Review” mean the court established under section 1803(b) of this title.

(4) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

(5) Intelligence community

The term “intelligence community” has the meaning given the term in section 401a(4) of this title.

(Pub. L. 95–511, title VII, § 701, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2437.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

PRIOR PROVISIONS

A prior section 701 of Pub. L. 95–511 was set out as a note under section 1801 of this title, prior to repeal by Pub. L. 110–261.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881a. Procedures for targeting certain persons outside the United States other than United States persons

(a) Authorization

Notwithstanding any other provision of law, upon the issuance of an order in accordance with

subsection (i)(3) or a determination under subsection (c)(2), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

(b) Limitations

An acquisition authorized under subsection (a)—

(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States;

(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

(c) Conduct of acquisition

(1) In general

An acquisition authorized under subsection (a) shall be conducted only in accordance with—

(A) the targeting and minimization procedures adopted in accordance with subsections (d) and (e); and

(B) upon submission of a certification in accordance with subsection (g), such certification.

(2) Determination

A determination under this paragraph and for purposes of subsection (a) is a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (i)(3) prior to the implementation of such authorization.

(3) Timing of determination

The Attorney General and the Director of National Intelligence may make the determination under paragraph (2)—

(A) before the submission of a certification in accordance with subsection (g); or

(B) by amending a certification pursuant to subsection (i)(1)(C) at any time during which judicial review under subsection (i) of such certification is pending.

(4) Construction

Nothing in subchapter I shall be construed to require an application for a court order

under such subchapter for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

(d) Targeting procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to—

(A) ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(B) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(2) Judicial review

The procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(e) Minimization procedures

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate, for acquisitions authorized under subsection (a).

(2) Judicial review

The minimization procedures adopted in accordance with paragraph (1) shall be subject to judicial review pursuant to subsection (i).

(f) Guidelines for compliance with limitations

(1) Requirement to adopt

The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

(A) compliance with the limitations in subsection (b); and

(B) that an application for a court order is filed as required by this chapter.

(2) Submission of guidelines

The Attorney General shall provide the guidelines adopted in accordance with paragraph (1) to—

(A) the congressional intelligence committees;

(B) the Committees on the Judiciary of the Senate and the House of Representatives; and

(C) the Foreign Intelligence Surveillance Court.

(g) Certification

(1) In general

(A) Requirement

Subject to subparagraph (B), prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall provide to the Foreign Intelligence Surveillance Court a written certification and any sup-

porting affidavit, under oath and under seal, in accordance with this subsection.

(B) Exception

If the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2) and time does not permit the submission of a certification under this subsection prior to the implementation of an authorization under subsection (a), the Attorney General and the Director of National Intelligence shall submit to the Court a certification for such authorization as soon as practicable but in no event later than 7 days after such determination is made.

(2) Requirements

A certification made under this subsection shall—

(A) attest that—

(i) there are procedures in place that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court that are reasonably designed to—

(I) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

(II) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States;

(ii) the minimization procedures to be used with respect to such acquisition—

(I) meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(II) have been approved, have been submitted for approval, or will be submitted with the certification for approval by the Foreign Intelligence Surveillance Court;

(iii) guidelines have been adopted in accordance with subsection (f) to ensure compliance with the limitations in subsection (b) and to ensure that an application for a court order is filed as required by this chapter;

(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

(vi) the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider; and

(vii) the acquisition complies with the limitations in subsection (b);

(B) include the procedures adopted in accordance with subsections (d) and (e);

(C) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

(i) appointed by the President, by and with the advice and consent of the Senate; or

(ii) the head of an element of the intelligence community;

(D) include—

(i) an effective date for the authorization that is at least 30 days after the submission of the written certification to the court; or

(ii) if the acquisition has begun or the effective date is less than 30 days after the submission of the written certification to the court, the date the acquisition began or the effective date for the acquisition; and

(E) if the Attorney General and the Director of National Intelligence make a determination under subsection (c)(2), include a statement that such determination has been made.

(3) Change in effective date

The Attorney General and the Director of National Intelligence may advance or delay the effective date referred to in paragraph (2)(D) by submitting an amended certification in accordance with subsection (i)(1)(C) to the Foreign Intelligence Surveillance Court for review pursuant to subsection (i).

(4) Limitation

A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which an acquisition authorized under subsection (a) will be directed or conducted.

(5) Maintenance of certification

The Attorney General or a designee of the Attorney General shall maintain a copy of a certification made under this subsection.

(6) Review

A certification submitted in accordance with this subsection shall be subject to judicial review pursuant to subsection (i).

(h) Directives and judicial review of directives

(1) Authority

With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition; and

(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

(2) Compensation

The Government shall compensate, at the prevailing rate, an electronic communication

service provider for providing information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(3) Release from liability

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

(4) Challenging of directives

(A) Authority to challenge

An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition to modify or set aside such directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Standards for review

A judge considering a petition filed under subparagraph (A) may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

(D) Procedures for initial review

A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that such petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny such petition and affirm the directive or any part of the directive that is the subject of such petition and order the recipient to comply with the directive or any part of it. Upon making a determination under this subparagraph or promptly thereafter, the judge shall provide a written statement for the record of the reasons for such determination.

(E) Procedures for plenary review

If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of such petition not later than 30 days after being assigned such petition. If the judge does not set aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

(F) Continued effect

Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

(G) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(5) Enforcement of directives

(A) Order to compel

If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such petition.

(B) Assignment

The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established under section 1803(e)(1) of this title not later than 24 hours after the filing of such petition.

(C) Procedures for review

A judge considering a petition filed under subparagraph (A) shall, not later than 30 days after being assigned such petition, issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

(D) Contempt of Court

Failure to obey an order issued under this paragraph may be punished by the Court as contempt of court.

(E) Process

Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

(6) Appeal

(A) Appeal to the Court of Review

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this subparagraph.

(B) Certiorari to the Supreme Court

The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may

file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(i) Judicial review of certifications and procedures

(1) In general

(A) Review by the Foreign Intelligence Surveillance Court

The Foreign Intelligence Surveillance Court shall have jurisdiction to review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e), and amendments to such certification or such procedures.

(B) Time period for review

The Court shall review a certification submitted in accordance with subsection (g) and the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and shall complete such review and issue an order under paragraph (3) not later than 30 days after the date on which such certification and such procedures are submitted.

(C) Amendments

The Attorney General and the Director of National Intelligence may amend a certification submitted in accordance with subsection (g) or the targeting and minimization procedures adopted in accordance with subsections (d) and (e) as necessary at any time, including if the Court is conducting or has completed review of such certification or such procedures, and shall submit the amended certification or amended procedures to the Court not later than 7 days after amending such certification or such procedures. The Court shall review any amendment under this subparagraph under the procedures set forth in this subsection. The Attorney General and the Director of National Intelligence may authorize the use of an amended certification or amended procedures pending the Court's review of such amended certification or amended procedures.

(2) Review

The Court shall review the following:

(A) Certification

A certification submitted in accordance with subsection (g) to determine whether the certification contains all the required elements.

(B) Targeting procedures

The targeting procedures adopted in accordance with subsection (d) to assess whether the procedures are reasonably designed to—

- (i) ensure that an acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States; and

- (ii) prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

(C) Minimization procedures

The minimization procedures adopted in accordance with subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 1801(h) of this title or section 1821(4) of this title, as appropriate.

(3) Orders

(A) Approval

If the Court finds that a certification submitted in accordance with subsection (g) contains all the required elements and that the targeting and minimization procedures adopted in accordance with subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use, or continued use in the case of an acquisition authorized pursuant to a determination under subsection (c)(2), of the procedures for the acquisition.

(B) Correction of deficiencies

If the Court finds that a certification submitted in accordance with subsection (g) does not contain all the required elements, or that the procedures adopted in accordance with subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

- (i) correct any deficiency identified by the Court's order not later than 30 days after the date on which the Court issues the order; or
- (ii) cease, or not begin, the implementation of the authorization for which such certification was submitted.

(C) Requirement for written statement

In support of an order under this subsection, the Court shall provide, simultaneously with the order, for the record a written statement of the reasons for the order.

(4) Appeal

(A) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order under this subsection. The Court of Review shall have jurisdiction to consider such petition. For any decision under this subparagraph affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of the reasons for the decision.

(B) Continuation of acquisition pending rehearing or appeal

Any acquisition affected by an order under paragraph (3)(B) may continue—

- (i) during the pendency of any rehearing of the order by the Court en banc; and
- (ii) if the Government files a petition for review of an order under this section, until the Court of Review enters an order under subparagraph (C).

(C) Implementation pending appeal

Not later than 60 days after the filing of a petition for review of an order under paragraph (3)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the review.

(D) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(5) Schedule

(A) Reauthorization of authorizations in effect

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court the certification prepared in accordance with subsection (g) and the procedures adopted in accordance with subsections (d) and (e) at least 30 days prior to the expiration of such authorization.

(B) Reauthorization of orders, authorizations, and directives

If the Attorney General and the Director of National Intelligence seek to reauthorize or replace an authorization issued under subsection (a) by filing a certification pursuant to subparagraph (A), that authorization, and any directives issued thereunder and any order related thereto, shall remain in effect, notwithstanding the expiration provided for in subsection (a), until the Court issues an order with respect to such certification under paragraph (3) at which time the provisions of that paragraph and paragraph (4) shall apply with respect to such certification.

(j) Judicial proceedings

(1) Expedited judicial proceedings

Judicial proceedings under this section shall be conducted as expeditiously as possible.

(2) Time limits

A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time as necessary for good cause in a manner consistent with national security.

(k) Maintenance and security of records and proceedings

(1) Standards

The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions, appeals, orders, and statements of reasons for a decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

(2) Filing and review

All petitions under this section shall be filed under seal. In any proceedings under this section, the Court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

(3) Retention of records

The Attorney General and the Director of National Intelligence shall retain a directive or an order issued under this section for a period of not less than 10 years from the date on which such directive or such order is issued.

(l) Assessments and reviews

(1) Semiannual assessment

Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f) and shall submit each assessment to—

(A) the Foreign Intelligence Surveillance Court; and

(B) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

(i) the congressional intelligence committees; and

(ii) the Committees on the Judiciary of the House of Representatives and the Senate.

(2) Agency assessment

The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community authorized to acquire foreign intelligence information under subsection (a), with respect to the department or element of such Inspector General—

(A) are authorized to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f);

(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States-person identity and the number of United States-person identities subsequently disseminated by the element concerned in re-

sponse to requests for identities that were not referred to by name or title in the original reporting;

(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(D) shall provide each such review to—

- (i) the Attorney General;
- (ii) the Director of National Intelligence; and

(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

- (I) the congressional intelligence committees; and
- (II) the Committees on the Judiciary of the House of Representatives and the Senate.

(3) Annual review

(A) Requirement to conduct

The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to acquisitions authorized under subsection (a)—

(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;

(ii) an accounting of the number of United States-person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed; and

(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

(B) Use of review

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element and, as appropriate, the application of the minimization procedures to a

particular acquisition authorized under subsection (a).

(C) Provision of review

The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

- (i) the Foreign Intelligence Surveillance Court;
- (ii) the Attorney General;
- (iii) the Director of National Intelligence; and

(iv) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

- (I) the congressional intelligence committees; and
- (II) the Committees on the Judiciary of the House of Representatives and the Senate.

(Pub. L. 95-511, title VII, § 702, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2438.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f)(1)(B) and (g)(2)(A)(iii), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Senate Resolution 400 of the 94th Congress, referred to in subsec. (I), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881b. Certain acquisitions inside the United States targeting United States persons outside the United States

(a) Jurisdiction of the Foreign Intelligence Surveillance Court

(1) In general

The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires an order under this chapter, and such acquisition is conducted within the United States.

(2) Limitation

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States while an order issued pursuant to subsection (c) is in effect. Nothing in this section shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application**(1) In general**

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

(A) the identity of the Federal officer making the application;

(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(D) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

(F) a certification made by the Attorney General or an official specified in section 1804(a)(6) of this title that—

(i) the certifying official deems the information sought to be foreign intelligence information;

(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

(iii) such information cannot reasonably be obtained by normal investigative techniques;

(iv) designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(v) includes a statement of the basis for the certification that—

(I) the information sought is the type of foreign intelligence information designated; and

(II) such information cannot reasonably be obtained by normal investigative techniques;

(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(2) Other requirements of the Attorney General

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(3) Other requirements of the judge

The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

(c) Order**(1) Findings**

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court approving the acquisition if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

(2) Probable cause

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a

judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) Review

(A) Limitation on review

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

(B) Review of probable cause

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

(C) Review of minimization procedures

If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

(D) Review of certification

If the judge determines that an application pursuant to subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for the determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

(4) Specifications

An order approving an acquisition under this subsection shall specify—

(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

(D) a summary of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

(E) the period of time during which the acquisition is approved.

(5) Directives

An order approving an acquisition under this subsection shall direct—

(A) that the minimization procedures referred to in paragraph (1)(C), as approved or modified by the Court, be followed;

(B) if applicable, an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under such order in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition;

(C) if applicable, an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

(D) if applicable, that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

(6) Duration

An order approved under this subsection shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

(7) Compliance

At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

(d) Emergency authorization

(1) Authority for emergency authorization

Notwithstanding any other provision of this chapter, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance

with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

(2) Minimization procedures

If the Attorney General authorizes an acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

(3) Termination of emergency authorization

In the absence of a judicial order approving an acquisition under paragraph (1), such acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) Use of information

If an application for approval submitted pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(e) Release from liability

No cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsection (c) or (d), respectively.

(f) Appeal

(1) Appeal to the Foreign Intelligence Surveillance Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

(2) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(g) Construction

Except as provided in this section, nothing in this chapter shall be construed to require an application for a court order for an acquisition that is targeted in accordance with this section at a United States person reasonably believed to be located outside the United States.

(Pub. L. 95-511, title VII, § 703, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2448.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d)(1), and (g), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881c. Other acquisitions targeting United States persons outside the United States

(a) Jurisdiction and scope

(1) Jurisdiction

The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

(2) Scope

No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d), respectively, or any other provision of this chapter.

(3) Limitations

(A) Moving or misidentified targets

If a United States person targeted under this subsection is reasonably believed to be located in the United States during the effective period of an order issued pursuant to subsection (c), an acquisition targeting such United States person under this section shall cease unless the targeted United States person is again reasonably believed to be located outside the United States during the effective period of such order.

(B) Applicability

If an acquisition for foreign intelligence purposes is to be conducted inside the United States and could be authorized under section 1881b of this title, the acquisition may only be conducted if authorized under section 1881b of this title or in accordance with another provision of this chapter other than this section.

(C) Construction

Nothing in this paragraph shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(b) Application

Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

(1) the identity of the Federal officer making the application;

(2) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

(3) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

(A) a person reasonably believed to be located outside the United States; and

(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(4) a statement of proposed minimization procedures that meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate;

(5) a certification made by the Attorney General, an official specified in section 1804(a)(6) of this title, or the head of an element of the intelligence community that—

(A) the certifying official deems the information sought to be foreign intelligence information; and

(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

(6) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

(7) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

(c) Order**(1) Findings**

Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveil-

lance Court shall enter an ex parte order as requested or as modified by the Court if the Court finds that—

(A) the application has been made by a Federal officer and approved by the Attorney General;

(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

(i) a person reasonably believed to be located outside the United States; and

(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

(C) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate; and

(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

(2) Probable cause

In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(3) Review**(A) Limitations on review**

Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

(B) Review of probable cause

If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(C) Review of minimization procedures

If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 1801(h) or 1821(4) of this title, as appropriate, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determina-

tion. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(D) Scope of review of certification

If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

(4) Duration

An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

(5) Compliance

At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

(d) Emergency authorization

(1) Authority for emergency authorization

Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection can, with due diligence, be obtained, and

(B) the factual basis for the issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

(2) Minimization procedures

If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

(3) Termination of emergency authorization

In the absence of an order under subsection (c), an emergency acquisition under paragraph

(1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

(4) Use of information

If an application submitted to the Court pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

(e) Appeal

(1) Appeal to the Court of Review

The Government may file a petition with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

(2) Certiorari to the Supreme Court

The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

(Pub. L. 95-511, title VII, § 704, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2453.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), (3)(B), (C), was in the original “this Act”, meaning Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section

404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881d. Joint applications and concurrent authorizations

(a) Joint applications and orders

If an acquisition targeting a United States person under section 1881b or 1881c of this title is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 1881b(a)(1) or 1881c(a)(1) of this title may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of sections 1881b(b) and 1881c(b) of this title, orders under sections 1881b(c) and 1881c(c) of this title, as appropriate.

(b) Concurrent authorization

If an order authorizing electronic surveillance or physical search has been obtained under section 1805 or 1824 of this title, the Attorney General may authorize, for the effective period of that order, without an order under section 1881b or 1881c of this title, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.

(Pub. L. 95-511, title VII, § 705, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881e. Use of information acquired under this subchapter

(a) Information acquired under section 1881a

Information acquired from an acquisition conducted under section 1881a of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title, except for the purposes of subsection (j) of such section.

(b) Information acquired under section 1881b

Information acquired from an acquisition conducted under section 1881b of this title shall be deemed to be information acquired from an electronic surveillance pursuant to subchapter I for purposes of section 1806 of this title.

(Pub. L. 95-511, title VII, § 706, as added Pub. L. 110-261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as

provided in section 404 of Pub. L. 110-261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110-261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110-261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881f. Congressional oversight

(a) Semiannual report

Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees and the Committees on the Judiciary of the Senate and the House of Representatives, consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, concerning the implementation of this subchapter.

(b) Content

Each report under subsection (a) shall include—

(1) with respect to section 1881a of this title—

(A) any certifications submitted in accordance with section 1881a(g) of this title during the reporting period;

(B) with respect to each determination under section 1881a(c)(2) of this title, the reasons for exercising the authority under such section;

(C) any directives issued under section 1881a(h) of this title during the reporting period;

(D) a description of the judicial review during the reporting period of such certifications and targeting and minimization procedures adopted in accordance with subsections (d) and (e) of section 1881a of this title and utilized with respect to an acquisition under such section, including a copy of an order or pleading in connection with such review that contains a significant legal interpretation of the provisions of section 1881a of this title;

(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5) of section 1881a(h) of this title;

(F) any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under section 1881a(a) of this title;

(G) a description of any incidents of non-compliance—

(i) with a directive issued by the Attorney General and the Director of National Intelligence under section 1881a(h) of this title, including incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under section 1881a(h) of this title; and

(ii) by an element of the intelligence community with procedures and guidelines adopted in accordance with subsections

(d), (e), and (f) of section 1881a of this title; and

(H) any procedures implementing section 1881a of this title;

(2) with respect to section 1881b of this title—

(A) the total number of applications made for orders under section 1881b(b) of this title;

(B) the total number of such orders—

- (i) granted;
- (ii) modified; and
- (iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881b(d) of this title and the total number of subsequent orders approving or denying such acquisitions; and

(3) with respect to section 1881c of this title—

(A) the total number of applications made for orders under section 1881c(b) of this title;

(B) the total number of such orders—

- (i) granted;
- (ii) modified; and
- (iii) denied; and

(C) the total number of emergency acquisitions authorized by the Attorney General under section 1881c(d) of this title and the total number of subsequent orders approving or denying such applications.

(Pub. L. 95–511, title VII, § 707, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2457.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

REFERENCES IN TEXT

Senate Resolution 400 of the 94th Congress, referred to in subsec. (a), was agreed to May 19, 1976, and was subsequently amended by both Senate resolution and public law. The Resolution, which established the Senate Select Committee on Intelligence, is not classified to the Code.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

§ 1881g. Savings provision

Nothing in this subchapter shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other subchapter of this chapter.

(Pub. L. 95–511, title VII, § 708, as added Pub. L. 110–261, title I, § 101(a)(2), July 10, 2008, 122 Stat. 2458.)

REPEAL OF SECTION

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as

provided in section 404 of Pub. L. 110–261, set out as a note under section 1801 of this title, effective Dec. 31, 2012, this section is repealed.

EFFECTIVE DATE OF REPEAL

Pub. L. 110–261, title IV, § 403(b)(1), July 10, 2008, 122 Stat. 2474, provided that, except as provided in section 404 of Pub. L. 110–261, set out as a Transition Procedures note under section 1801 of this title, the repeals made by section 403(b)(1) are effective Dec. 31, 2012.

SUBCHAPTER VII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

§ 1885. Definitions

In this subchapter:

(1) Assistance

The term “assistance” means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) Civil action

The term “civil action” includes a covered civil action.

(3) Congressional intelligence committees

The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(4) Contents

The term “contents” has the meaning given that term in section 1801(n) of this title.

(5) Covered civil action

The term “covered civil action” means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(6) Electronic communication service provider

The term “electronic communication service provider” means—

(A) a telecommunications carrier, as that term is defined in section 153 of title 47;

(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(7) Intelligence community

The term “intelligence community” has the meaning given the term in section 401a(4) of this title.

(8) Person

The term “person” means—

(A) an electronic communication service provider; or

(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

(i) an order of the court established under section 1803(a) of this title directing such assistance;

(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18; or

(iii) a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(h) of this title.

(9) State

The term “State” means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

(Pub. L. 95-511, title VIII, § 801, as added Pub. L. 110-261, title II, § 201, July 10, 2008, 122 Stat. 2467.)

REFERENCES IN TEXT

Section 1805b of this title, referred to in par. (8)(B)(iii), was repealed by Pub. L. 110-261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

§ 1885a. Procedures for implementing statutory defenses

(a) Requirement for certification

Notwithstanding any other provision of law, a civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that—

(1) any assistance by that person was provided pursuant to an order of the court established under section 1803(a) of this title directing such assistance;

(2) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18;

(3) any assistance by that person was provided pursuant to a directive under section 1802(a)(4), 1805b(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 1881a(h) of this title directing such assistance;

(4) in the case of a covered civil action, the assistance alleged to have been provided by the electronic communication service provider was—

(A) in connection with an intelligence activity involving communications that was—

(i) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(ii) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(B) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(i) authorized by the President; and

(ii) determined to be lawful; or

(5) the person did not provide the alleged assistance.

(b) Judicial review

(1) Review of certifications

A certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

(2) Supplemental materials

In its review of a certification under subsection (a), the court may examine the court order, certification, written request, or directive described in subsection (a) and any relevant court order, certification, written request, or directive submitted pursuant to subsection (d).

(c) Limitations on disclosure

If the Attorney General files a declaration under section 1746 of title 28 that disclosure of a certification made pursuant to subsection (a) or the supplemental materials provided pursuant to subsection (b) or (d) would harm the national security of the United States, the court shall—

(1) review such certification and the supplemental materials in camera and ex parte; and

(2) limit any public disclosure concerning such certification and the supplemental materials, including any public order following such in camera and ex parte review, to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the paragraph of subsection (a) that is the basis for the certification.

(d) Role of the parties

Any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court referred to in subsection (a) for review and shall be permitted to participate in the briefing or argument of any legal issue in a judicial proceeding conducted pursuant to this section, but only to the extent that such participation does not require the disclosure of classified information to such party. To the extent that classified information is relevant to the proceeding or would be revealed in the determination of an issue, the court shall review such in-

formation in camera and ex parte, and shall issue any part of the court's written order that would reveal classified information in camera and ex parte and maintain such part under seal.

(e) Nondelegation

The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or the Deputy Attorney General.

(f) Appeal

The courts of appeals shall have jurisdiction of appeals from interlocutory orders of the district courts of the United States granting or denying a motion to dismiss or for summary judgment under this section.

(g) Removal

A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28.

(h) Relationship to other laws

Nothing in this section shall be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(i) Applicability

This section shall apply to a civil action pending on or filed after July 10, 2008.

(Pub. L. 95-511, title VIII, § 802, as added Pub. L. 110-261, title II, § 201, July 10, 2008, 122 Stat. 2468.)

REFERENCES IN TEXT

Section 1805b of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 110-261, title IV, § 403(a)(1)(A), July 10, 2008, 122 Stat. 2473.

§ 1885b. Preemption

(a) In general

No State shall have authority to—

(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

(b) Suits by the United States

The United States may bring suit to enforce the provisions of this section.

(c) Jurisdiction

The district courts of the United States shall have jurisdiction over any civil action brought

by the United States to enforce the provisions of this section.

(d) Application

This section shall apply to any investigation, action, or proceeding that is pending on or commenced after July 10, 2008.

(Pub. L. 95-511, title VIII, § 803, as added Pub. L. 110-261, title II, § 201, July 10, 2008, 122 Stat. 2470.)

§ 1885c. Reporting

(a) Semiannual report

Not less frequently than once every 6 months, the Attorney General shall, in a manner consistent with national security, the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution, fully inform the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives concerning the implementation of this subchapter.

(b) Content

Each report made under subsection (a) shall include—

(1) any certifications made under section 1885a of this title;

(2) a description of the judicial review of the certifications made under section 1885a of this title; and

(3) any actions taken to enforce the provisions of section 1885b of this title.

(Pub. L. 95-511, title VIII, § 804, as added Pub. L. 110-261, title II, § 201, July 10, 2008, 122 Stat. 2470.)

CHAPTER 37—NATIONAL SECURITY SCHOLARSHIPS, FELLOWSHIPS, AND GRANTS

Sec.

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§ 1901. Short title, findings, and purposes

(a) Short title

This chapter may be cited as the “David L. Boren National Security Education Act of 1991”.

(b) Findings

The Congress makes the following findings:

(1) The security of the United States is and will continue to depend on the ability of the United States to exercise international leadership.

(2) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United